

EXHIBIT 10

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE AUTHORS GUILD, INC.,
ASSOCIATION OF AMERICAN
PUBLISHERS, INC., et al.,
Plaintiffs,

vs. CASE NO. 05 CV 8136 (DC)

GOOGLE, INC.,
Defendants.

_____ /

H I G H L Y C O N F I D E N T I A L
PURSUANT TO THE PROTECTIVE ORDER

DEPOSITION OF DANIEL CLANCY
SAN FRANCISCO, CALIFORNIA
JUNE 1, 2012

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CCRR, CLR
CSR LICENSE NO. 9830
JOB NO. 50225

Page 2

1 JUNE 1,2012
 2 9:58 a.m.
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 4
 5
 6 DEPOSITION OF MICHAEL CLANCY, taken at
 7 Kilpatrick Townsend & Stockton, LLP,
 8 Two Embarcadero Center, San Francisco,
 9 California, pursuant to Notice, before me,
 10 ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR,
 11 CSR License No. 9830.
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Page 4

1 A P P E A R A N C E S: (Continued.)
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 4 FOR GOOGLE:
 5 DURIE TANGRI
 6 By: DARALYN J. DURIE, Esq.
 7 217 Leidesdorff Street
 8 San Francisco, California 94111
 9
 10
 11
 12 FOR THE DEFENDANT INTERVENORS:
 13 By: LAURA ABELSON, Esq. (Via Telephone)
 14 BROWN GOLDSTEIN & LEVY
 15 120 Baltimore Street
 16 Baltimore, Maryland 21202
 17
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Page 3

1 A P P E A R A N C E S:
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 4 FOR DEFENDANTS:
 5 KILPATRICK TOWNSEND & STOCKTON
 6 By: ALLISON SCOTT ROACH, Esq.
 7 1100 Peachtree Street, N.E.
 8 Atlanta, Georgia 30309
 9
 10
 11
 12
 13 FOR PLAINTIFFS:
 14 FRANKFURT KURNIT KLEIN & SELZ
 15 By: JEREMY GOLDMAN, Esq.
 16 488 Madison Avenue
 17 New York, New York 10022
 18
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1 SAN FRANCISCO, CALIFORNIA
 2 JUNE 1, 2012
 3 9:56 A.M.
 4
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 6
 7 DANIEL CLANCY,
 8 having been sworn as a witness
 9 by the Certified Shorthand Reporter,
 10 testified as follows:
 11
 12 EXAMINATION BY MR. GOLDMAN
 13 MR. GOLDMAN: Good morning, Mr. Clancy.
 14 My name is Jeremy Goldman. I'm an attorney
 15 for the defendants in this lawsuit. I work with
 16 the -- sorry -- for the plaintiff -- plaintiffs in
 17 this lawsuit.
 18 I work with the law firm Frankfurt Kurnit
 19 Klein & Selz. We represent the Authors Guild, a
 20 number of authors' associations, and a number of
 21 individual authors who have sued five universities who
 22 are the defendants in this lawsuit.
 23 Good morning, and thank you for coming.
 24 Why don't we go around the room and just get
 25 a roll call to see who's here and what everyone's role

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1 is in the room.
 2 THE WITNESS: So I'm Dan Clancy, and I am
 3 here representing Google.
 4 MS. DURIE: Daralyn Durie, representing
 5 Google.
 6 MS. KEATING: Amy Keating, Google.
 7 MS. ROACH: Allison Roach with Kilpatrick
 8 Townsend. I represent the defendants in this case.
 9 MR. GOLDMAN: Thank you.
 10 MS. ABLESON: Laura Ableson. I represent the
 11 defendant intervenors, the National Federation of the
 12 Blind, Georgina Kleege, Blair Seidlitz and Courtney
 13 Wheeler. And I'm on the phone in Baltimore, Maryland.
 14 MR. GOLDMAN: Okay.
 15 Q Mr. Clancy, could you state your -- just name
 16 and address. Spell your full name and give your
 17 address for the record.
 18 A Daniel Joseph Clancy. D-A-N-I-E-L,
 19 J-O-S-E-P-H, and then Clancy, C-L-A-N-C-Y.
 20 My personal address is 1400 McKenzie Avenue,
 21 Los Altos, California 94024.
 22 Q Are you currently employed?
 23 A I am currently employed.
 24 Q And who is your current employer?
 25 A Google.

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1 you know, against Google.
 2 Q And when approximately was that deposition?
 3 A Let's see. Three to four months ago. Does
 4 that sound right? I'm not sure. I don't remember.
 5 Q And other than that deposition, you've never
 6 been deposed before?
 7 A Correct.
 8 Q Have you ever been a party in a lawsuit
 9 individually?
 10 A No.
 11 Q Have you ever testified at any trial before?
 12 A No.
 13 Q Have you ever testified before Congress?
 14 A No.
 15 Q So I'm just going to just sort of describe
 16 what the ground rules are today. I know you've done a
 17 deposition, but we'll just review.
 18 I'm going to be asking you a number of
 19 questions today. If you don't understand a question,
 20 please let me know, and I'm happy to restate it. I'm
 21 happy to rephrase a question if you don't understand
 22 it.
 23 It's important that we don't speak over one
 24 another, as is natural in normal discourse. It's also
 25 important that you give room for your attorney to

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1 Q Is that -- is that Google Inc.?
 2 A Yes.
 3 Q And how long have you been employed by Google
 4 Inc.?
 5 A Since January of 2005.
 6 Q And what is your current position at Google
 7 Inc.?
 8 A I am an engineering director.
 9 Q Have you held any other positions at Google
 10 Inc.?
 11 A I've been an engineering director the entire
 12 time. I've had varying responsibilities at various
 13 times as an engineering director.
 14 Q Could you tell me what your current
 15 responsibilities are as an engineering director.
 16 A My current responsibilities, I lead a group
 17 in research doing work in human/machine interaction.
 18 Q Now, before I go through this, why don't
 19 we -- why don't we take a step back, and I'll just go
 20 over some ground rules.
 21 And have you ever been deposed before?
 22 A Once.
 23 Q And what were the circumstances of that
 24 deposition?
 25 A It was for the Google Books ongoing lawsuit,

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1 object if she objects to the form of a question; is
 2 that clear?
 3 A Yes.
 4 Q We were talking about your responsibilities
 5 as engineering director. Could you tell me what you
 6 mean by leading a group in research in human/machine
 7 interaction, what that means.
 8 A I am a manager for a group of researchers
 9 that do a diverse range of activities. The locus
 10 would be technologies that deal with how humans can
 11 interact with computers in various different ways.
 12 Q Is -- is your work in connection with -- with
 13 those responsibilities, does it -- does it relate to a
 14 particular product that Google offers to users?
 15 A Not at this point.
 16 Q And are you developing a particular product
 17 now?
 18 A Not any particular product.
 19 Q And prior to doing -- how long have you been
 20 doing this work involving human/machine interaction?
 21 A About three months.
 22 Q And prior to taking on those
 23 responsibilities, did you have another set of core
 24 responsibilities?
 25 A Yes. I was responsible for the engineering

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1 team at YouTube.
 2 Q And for approximately how long were you
 3 performing those responsibilities?
 4 A Approximately 19 months.
 5 Q And could you briefly describe what those
 6 responsibilities entailed.
 7 A Those responsibilities are leading the team
 8 that maintains the servers, that builds the website,
 9 that streams the videos and provides the service, you
 10 know, that is YouTube.
 11 Q So do you remember approximately when you
 12 took that position?
 13 A June of 2010.
 14 Q And prior to June 2010, did you have another
 15 set of primary responsibilities --
 16 A Yes.
 17 Q -- as engineering director?
 18 A Yes.
 19 Q And could you describe what those are.
 20 A I was responsible at that point for Google
 21 Book Search at that point, along with some other
 22 products, such as Google Product Search and Google
 23 News.
 24 Q Now, you mentioned Google Book Search, Google
 25 Products and Google News.

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1 reported to the same person at Google?
 2 A No.
 3 Q Who do you currently report to?
 4 A Alfred Spector.
 5 Q And what is -- and how long have you been
 6 reporting to Alfred Spector?
 7 A About three months.
 8 Q And what is Alfred Spector's title or
 9 position?
 10 A He's the VP of research.
 11 Q And when you were working at YouTube or
 12 working for the YouTube product, who was -- who were
 13 you reporting to at that time?
 14 A Salar Kamangar, K-A-M-A-N-G-A-R, I believe.
 15 Q And what was Mr. Kamangar's position at
 16 Google?
 17 A He is the senior vice president responsible
 18 for YouTube.
 19 Q And do you know who -- who Mr. Kamangar
 20 reports to?
 21 A Larry Page.
 22 Q And what is Mr. Page's position?
 23 A He is the CEO of Google.
 24 Q And were you reporting to Mr. Kamangar for
 25 the entire duration of the time that you were working

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1 Are those -- do you con- -- does Google
 2 consider each of those a separate product?
 3 A Yes, a separate initiative.
 4 Q And when you say you were responsible for
 5 Google Book Search, what do you -- what do you mean by
 6 that?
 7 A My official role was leading the engineering
 8 team that developed Google Books product and
 9 capabilities.
 10 Q Did you have an unofficial role also in
 11 connection with that project?
 12 A In addition to leading the engineering team,
 13 at times I would -- I would be involved more generally
 14 in activities regarding Google Book Search, such as
 15 interfacing with our library partners and interacting
 16 with the authors and publishers at times with respect
 17 to the settlement.
 18 Q And prior to your -- prior to your position
 19 involving Google Book Search, did you hold any other
 20 responsibilities at Google?
 21 A No.
 22 Q So when you were hired in January 2005, you
 23 were put immediately into that position?
 24 A Yes, yes.
 25 Q Now, during -- since January 2005, have you

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1 on the YouTube product?
 2 A For a portion of it I was reporting to Bill
 3 Coughran, C-O-U-G-H-R-A-N.
 4 Q That's not how I would have guessed it.
 5 And what was Mr. Coughran's position at
 6 Google?
 7 A He was SVP of engineering.
 8 Q And when did that change in reporting occur?
 9 A Google realigned its organizational structure
 10 along with product areas. It had been a functional
 11 organization, so I had reported to an engineering
 12 lead. When it realigned its organizational structure,
 13 I changed my reporting in to Salar, who was
 14 responsible for YouTube.
 15 Q And between the time that you were hired in
 16 January 2005 until June 2010, when you were working
 17 with the Google Books -- Google Books Search product,
 18 were you reporting to the same person?
 19 A No.
 20 Q And could you tell me who you reported to
 21 throughout that time period.
 22 A Initially, I reported to Alan Eustace, who
 23 was an SVP of engineering. Then I reported -- and
 24 Eustace is E-U-S-T-A-C-E. Then I reported to Urs,
 25 U-R-S, Hoeltz, H-O-E-L-T-Z, who is also an SVP of

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<p>1 engineering. And then I reported to Bill Coughran, 2 and I began reporting to Bill Coughran while I was 3 still doing Google Books. 4 Q And to whom did Alan Eustace report? 5 A Larry Page. 6 Q Same answer for Mr. Hoeltz? 7 A At the time, I believe Urs Hoeltz and Bill 8 Coughran both reported to Alan Eustace. 9 Q In terms of the organizational structure at 10 Google, would it be fair to say that you were the 11 person with the -- the highest on the organizational 12 chart with respect to the Google Books project? 13 A Yes, along with Adam Smith led product, and 14 he was a peer. 15 Q And how did your responsibilities differ from 16 Mr. Smith's in relation to the Google Book product? 17 A We shared leadership on many issues, so it 18 varied with respect to different -- different issues. 19 I would spend more time with engineering. He would 20 spend more time -- he was -- the product managers 21 reported to him. So with user experience and other 22 things, he would spend more time on that. 23 Q Now, before joining Google, did you hold any 24 other employment? 25 A Yes.</p>	<p>1 Q And what were you -- what did you do before 2 you came to Google? 3 A I worked for NASA Ames. 4 Q What is -- I know what NASA is -- what is 5 Ames? 6 A Ames is a -- is one of NASA's centers, NASA 7 Ames Research Center. 8 Q And how long did you work there? 9 A I worked there for seven years. 10 Q And can you briefly describe what you -- what 11 you did over there. 12 A Upon departure, I was leading the information 13 sciences directorate, which does all of the research 14 in information sciences for the agency. 15 Q "The agency" being NASA? 16 A NASA -- the agency being NASA, yes. 17 Q Now, could you -- could you just briefly 18 describe your educational background from college and 19 any other degrees that you have. 20 A Yes. So I got my undergraduate degree from 21 Duke University in 1985. I worked after that for 22 approximately four years. Then I went to University 23 of Texas at Austin, and I received a master's in 24 computer science and a Ph.D. in computer science, and 25 left there in 1997, I believe.</p>
Page 16	Page 17
<p>1 Q Did you take any steps to prepare for today's 2 deposition? 3 A No. 4 Q Did you -- did you meet with anybody in 5 person to -- in connection with preparing for today's 6 deposition? 7 A We talked briefly in preparation. 8 Q Did you review any documents in preparation 9 for today's deposition? 10 MS. DURIE: And you can answer that question 11 with respect to any documents that refreshed your 12 recollection. 13 THE WITNESS: I did not review any documents 14 that refreshed my recollection. 15 MR. GOLDMAN: You mentioned before that as 16 part of your responsibilities at -- when you were 17 working with Google Books that you interfaced with 18 library partners. 19 Q What is a library partner? 20 A A library partner is one of the libraries 21 that have been participating in the Google library 22 project and providing books to Google, these books 23 which Google would scan for the Google Book Search 24 product. 25 Q So we have -- you've used a couple of terms</p>	<p>1 now I just want to try to unpack a little bit. The 2 first one is one that we've been using, but I don't 3 know that we defined it. It's Google Book Search 4 project. 5 What is the Google Book Search project? 6 A Google Book Search project is an initiative 7 to make books searchable and indexed for users to 8 discover when a book is relevant to a particular 9 query. And then Google provides links to the user 10 that would allow that user to purchase the book or 11 find the book in the library. 12 The Google Book Search project has two 13 components. 14 One, the Google Partner Program, where we 15 enter into agreements with rights holders, 16 traditionally publishers, sometimes individual 17 authors, and they provide Google a copy of their book. 18 Google scans the book, indexes it, makes it searchable 19 and allows users to preview a portion of that book as 20 specified by the rights holder in response to a query. 21 The other half of the project is what would 22 be called the Google Library project. In the Google 23 Library project, Google obtains books predominantly 24 from libraries. Google then scans these books and, 25 again, makes them searchable.</p>

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<p>1 In the case of the Google Library project, if 2 the book is deemed to be a public domain book, then 3 Google allows users to -- to access the book. If the 4 book may be in copyright, and the copyright status is 5 un- -- we're uncertain, then Google only displays 6 snippets in response to a query. 7 Q Do you know when the Google Book Search 8 project began at Google? 9 A I do not know the exact date. 10 Q Do you know when it first became available to 11 users to be able to use? 12 A I do not know the exact date. It was in 13 2004. 14 Q This was before you came on board? 15 A It launched before I came on board. 16 Q Now, the two elements that you described, the 17 Google Partner program and the Google Library project, 18 have those two elements always been part of the Google 19 Book Search project, to your knowledge? 20 A Yes, I believe so. 21 Q Now, you said as part of the Google Partner 22 program, the rights holders provide a copy of the book 23 that Google scans. 24 Are there any instances in which Google 25 obtained a copy of the book through the Google Library</p>	<p>1 project, and then they used that scan as part of the 2 Google Partner program? 3 A I'm not sure if that has ever happened. 4 Q So maybe I'll try it through -- maybe I can 5 do a hypothetical, and maybe you can answer it that 6 way. 7 If a library provides a book that's in 8 copyright or is questionably in copyright to Google, 9 and then Google scans it, and at that point in time 10 the rights holder of that book had not given 11 permission to Google, but then later they do give 12 permission, do you know, does the rights holder 13 provide a new copy of the book, or do they use the 14 preexisting digital scan? 15 A Traditionally, a rights holder would just 16 provide a new copy because when the rights holder 17 provides a copy, we scan it through our destructive 18 scanning. The scanning technology is different. It 19 allows a higher quality scan. Although there may be 20 instances where -- there may be instances where we 21 reuse the scan for the rights holder to unlock the 22 scan, and at times there have been discussions of 23 allowing a rights holder to unlock the scan. 24 And I -- now, as I think, there -- I do 25 remember a few specific instances where -- yes, where</p>
Page 20	Page 21
<p>1 the rights holder did authorize full display of a book 2 from a library scanned book. Actually, Paul Courant 3 is a rights holder and has a book that is being 4 displayed that was scanned in the library project. 5 Q You mentioned the term "destructive 6 scanning." What does that mean? 7 A That means that the -- the binding of the 8 book is chopped off, and then it is fed through a 9 sheet-fed scanner. 10 Q And that's a process that's different than 11 what was used in the library project; is that right? 12 A Correct, correct. 13 Q When -- now, when you said -- you said the 14 term "unlock the scan." What does unlock the scan 15 mean? 16 A It would be -- allow users to view the 17 contents of the scan. 18 Q Now, in both instances -- and by "both 19 instances," I mean the Google Partner program and the 20 Google Library project -- is it correct that Google 21 indexes the content of the entire work for both 22 programs? 23 A Yes. 24 Q And what does -- what does that mean to index 25 a book, from Google's perspective?</p>	<p>1 A To index a book means to take the text from 2 the book and treat it in a manner similar to how we 3 treat text online, and create what is called an 4 inverted index that allows you to go from a word to 5 where that word exists within a particular book. 6 Q So when a user performs a search on Google, 7 it's not searching the Internet itself; right? It's 8 searching the index that Google has? 9 A The index is the intermediate representation 10 that Google uses to identify relevant documents to a 11 query. 12 Q Does Google also retain a copy of the content 13 that it obtains through -- through -- through the web, 14 independent of the index? 15 And maybe I didn't ask that question very 16 well. Let me -- let me rephrase it. 17 How does -- let me start here: How does 18 Google obtain content that's on the Internet? 19 MS. ROACH: Objection. 20 For what product? 21 MR. GOLDMAN: Q. How does -- how does Google 22 create its index? Let's start there. 23 MS. ROACH: Objection. 24 MS. DURIE: Now I think it is vague. 25 MR. GOLDMAN: Okay.</p>

Page 22	Page 23
<p>1 THE WITNESS: When Google creates its index 2 of documents that are on the worldwide web, it does 3 what is called crawling the web, which means it issues 4 a command to the various servers that are on the web, 5 http servers. The servers return a copy of the page, 6 which Google uses to create its index. 7 MR. GOLDMAN: Q. What I'm trying to 8 understand is, you say the spider -- can we call it a 9 spider that crawls the web? 10 And is it called Googlebot? Is that what 11 Google refers to it as? 12 A (Witness nods head.) 13 Q When Googlebot returns a copy of the page, is 14 that an independent file? 15 And by "independent," I mean independent of 16 the index that has been created. 17 MS. DURIE: Objection; vague. 18 MS. ROACH: I'm sorry. If I could -- if we 19 could stipulate that we join in objections that are 20 made by witness' counsel. And by "we" -- I'm sorry. 21 This is -- I'm Allison Roach from Kilpatrick Townsend, 22 and we join in objections. 23 THE WITNESS: So could you clarify. 24 MR. GOLDMAN: Sure. 25 Q Let's start here: You said that when the web</p>	<p>1 is crawled, it returns a copy of the page. 2 What do you mean by it returns a copy of the 3 page? 4 A That the server produces the page in response 5 to our query, in the manner similar to if a user is at 6 a browser and requests a copy of the page, requests to 7 view the page, that page is sent from the server to 8 the user's browser. 9 So in a similar fashion, that when a user 10 visits a web page, it is requesting that a copy be 11 presented in -- in its browser. 12 Q So at that point in time, is a copy of the 13 page -- 14 MS. DURIE: I'm now going to -- this seems to 15 me beyond the scope of anything that he was designated 16 for and unrelated to Google Books. I mean, I'm 17 fine -- I'm fine with having you ask these questions 18 in the context of Google Books. But this seems to me 19 beyond the scope of anything that we agreed to discuss 20 in this deposition. 21 MR. GOLDMAN: Okay. I -- you'll see I'm not 22 going to spend very long on this point, and it's 23 only -- I'm only trying to understand the relationship 24 between how Google indexes things online and how they 25 index it through Google Books.</p>
Page 24	Page 25
<p>1 MS. DURIE: Why don't maybe you start by 2 asking questions about how it works in the context of 3 Google Books, and then we can see whether there is a 4 foundation for questions that relate to what's 5 happening online, because the relevance of this to 6 anything having to do with Google Books is not clear. 7 MR. GOLDMAN: Objection noted. Thank you. 8 Q So does -- when it -- 9 MR. GOLDMAN: Could you restate my last 10 question. 11 MS. DURIE: Well, to be clear, I'm not going 12 to let him answer questions about search in general in 13 the absence of some foundation as to how it relates to 14 Google Books. 15 MR. GOLDMAN: And what's your basis for that 16 objection? 17 MS. DURIE: That it's beyond the scope of 18 what we agreed this deposition would encompass. 19 MR. GOLDMAN: Okay. We'll see if we can 20 avoid that. I have no intention of asking questions 21 that don't relate to Google Books. 22 MS. DURIE: That's what I'm saying. Why 23 don't you start -- if you start -- 24 MR. GOLDMAN: That's fine. 25 MS. DURIE: -- asking questions about Google</p>	<p>1 Books -- 2 MR. GOLDMAN: You know what? That's fine. I 3 don't -- that's fine. I'd like to -- I'd like to 4 avoid -- 5 MS. DURIE: Yeah. 6 MR. GOLDMAN: -- you know -- 7 Q So why don't you describe the process for 8 what occurs when Google indexes a book. How does that 9 work? 10 A When Google indexes a book, we take the scan 11 of the book which has been OCR'd, which is short for 12 optical character recognition, which creates a textual 13 representation of the book. 14 We then create by going through the words in 15 the book -- when you see that a word exists at a 16 particular -- on a particular page in the book, in the 17 index you will mark in -- you will mark for that word 18 the page -- the book in which it occurs and the page 19 on which it occurs, to then create a representation 20 where if you start with the words or a query, you can 21 then identify the pages of the web books the words 22 from that query occur in. 23 Q And it is through that index that users can 24 then locate pages in a book where a search term may 25 occur; is that right?</p>

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1 A Yes, yes, that when -- yes.
 2 Q Now, after that index is created, is it still
 3 necessary to have a -- when I say "necessary," I mean
 4 is it still necessary to perform that search to have a
 5 copy of the OCR text that was used to create the index
 6 in the first place?
 7 A When the search is performed, the index is
 8 the representation used to identify where the words
 9 are.
 10 However, you both then -- you need to then
 11 display a snippet of text that displays to the user
 12 words from the page that helps that user determine the
 13 relevance of a document, along with other documents.
 14 And to generate the snippet, you use the text from the
 15 original document.
 16 And in addition, at times you may -- you will
 17 recreate the index for various reasons, and the text
 18 is required for that.
 19 Q Let's start with the first use, if we could
 20 call it that, of the original copy that was used to
 21 make the index.
 22 Would it -- would it be possible to -- is it
 23 possible from an engineering perspective to display
 24 the snippet of text using the index itself, meaning to
 25 reverse-engineer the index?

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1 content to its index; is that correct?
 2 A Yes.
 3 Q Are there any other instances in which Google
 4 added offline content, that you're aware of, to its
 5 index?
 6 A We also had an initiative to make
 7 newspapers -- to digitize newspapers and make them
 8 indexed and discovered as well.
 9 Q And is that currently offered through Google
 10 services? Is the con- -- is the content of those
 11 newspapers currently discoverable through a search at
 12 Google?
 13 A I do not know if it's still discoverable
 14 through a search at Google.
 15 Q Was there a time when it was discoverable?
 16 A Yes.
 17 Q And through what platform was it
 18 discoverable?
 19 A Google News Archive.
 20 Q And did Google obtain permission from the
 21 rights holders of those -- to your knowledge, did
 22 Google obtain permission from the rights holders of
 23 those newspapers when -- to scan -- to scan them?
 24 MS. DURIE: That's clearly outside of the
 25 scope.

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1 MS. DURIE: Objection; vague.
 2 THE WITNESS: Not to my knowledge.
 3 MR. GOLDMAN: Q. So it's not possible to
 4 reconstruct the order of where it's using the index?
 5 A It depends on the specifics of the index.
 6 And I -- I do not know how you build the index, and I
 7 am -- I'm not certain in terms of the specifics of
 8 whether or not you could fully recreate the order of
 9 words in the text.
 10 Q Okay. What is the purpose of the Google
 11 Books project?
 12 MS. DURIE: Objection; vague.
 13 You can answer.
 14 THE WITNESS: The Google Books project was
 15 initiated to help make books searchable and findable
 16 by users, in much the same way that Google enables
 17 users to find web pages and then go to those web
 18 pages. And Google Books was initiated to try and make
 19 these books discoverable when relevant to a query.
 20 MR. GOLDMAN: Q. If I refer to -- to the
 21 books that were scanned as part of this project as
 22 "offline content," would you know what I mean by that?
 23 A Yes.
 24 Q Are there any other -- is -- so Google,
 25 through the Google Books program, added offline

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1 MR. GOLDMAN: I don't agree. That's not a
 2 proper objection.
 3 MS. DURIE: Well, sure, it is a proper
 4 objection. We had -- I mean, it's not a relevance
 5 issue. We had an explicit agreement as to the
 6 subjects on which this witness would be testifying.
 7 And if you can explain to me how this falls under the
 8 scope of one of those subjects, I'm happy to listen.
 9 But none of the subjects that I read had
 10 anything to do -- I mean, I let you lay a little bit
 11 of foundation. But none of the subjects had anything
 12 to do with newspapers.
 13 MR. GOLDMAN: I guess we can -- we can talk
 14 about this off the record or we can talk about it on
 15 the record. I have -- I would like to discuss with
 16 you that issue so it doesn't -- we don't keep bumping
 17 up against it.
 18 So why don't we -- why don't we go offline
 19 for one minute and so we can talk about this --
 20 MS. DURIE: Fine.
 21 MR. GOLDMAN: -- because I don't want to keep
 22 bumping up against this.
 23 (Discussion off the record.)
 24 MR. GOLDMAN: Okay. Back on.
 25 I'll withdraw my last question.

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1 Q Why does Google want to help make books
2 searchable and findable by users?
3 A Google as a search engine has a role to help
4 users discover information. And we believed and
5 believe that there is useful information in books that
6 both are relevant to the user and also facilitates the
7 reason that book was written, for people to read it.
8 And so by making the information discoverable, you are
9 helping the user find relevant sources.
10 Q Do you believe that the existence of content
11 from Google Books is attractive to -- to users?
12 MS. ROACH: Objection.
13 MS. DURIE: Yeah. Calls for speculation.
14 You can answer.
15 THE WITNESS: Can you clarify what you mean
16 by "attractive to users."
17 MR. GOLDMAN: Q. Do you believe more users
18 use Google's search engine because of the contents
19 from Google Books?
20 A I don't know.
21 Q You mentioned before that Google had library
22 partners, and you described what those were.
23 Could you -- could you tell me who the
24 largest library partners are.
25 And by "largest," I mean the library partners

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1 partner of Google?
2 A Continues to be a partner. We have -- we are
3 not actively scanning because we've scanned -- we've
4 completed the books that we're going to scan from
5 Harvard.
6 Q Was Harvard one of the first library partners
7 of Google?
8 A It was one of the first five, I believe.
9 Q Now, that partnership was formed prior to you
10 joining Google; is that right?
11 A The -- the full contract with Harvard was
12 signed afterwards. We had a pilot program going when
13 I joined.
14 Q And what was the nature of that pilot program
15 with Harvard?
16 A Where we were scanning books, but it was just
17 more narrow in scope. It was a limited number. I do
18 not know exactly how many.
19 Q And you said the full contract covered more
20 books; is that fair to say?
21 A Yes, yes.
22 Q And is it correct that Harvard did not agree
23 to provide copyrighted books to Google for scanning?
24 A Harvard did provide some copyrighted books in
25 its full agreement. It switched to where it only

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1 that contributed the greatest number of books to
2 Google for scanning.
3 A Uh-huh. University of Michigan, Stanford
4 University, University of California System. Those
5 would be the -- in terms of number of books provided,
6 the top three.
7 Q So are you aware University of Michigan and
8 University of California System are both defendants in
9 this lawsuit? Are you aware of that?
10 A I am now.
11 Q And I -- are -- is Cornell University also a
12 library partner?
13 A Cornell is a library partner.
14 Q And what about Wisconsin?
15 A Wisconsin is a library partner.
16 Q And what about Indiana University?
17 A Indiana University is a library partner as
18 part of our CIC agreement.
19 Q Is the Library of Congress also a library
20 partner?
21 A It was a library partner as part of a pilot
22 project.
23 Q And what about Harvard University?
24 A Yes.
25 Q And then Harvard continues to be a library

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1 provided public domain books.
2 Q Did you ever have any discussions with anyone
3 at Harvard regarding the decision to switch to doing
4 public domain only?
5 A No.
6 Q Do you know why Harvard made that decision to
7 switch?
8 A No.
9 MS. ROACH: Objection.
10 THE WITNESS: I do not.
11 MR. GOLDMAN: Q. Are you aware that Harvard
12 declined to give Google copyrighted books for
13 scanning?
14 MS. DURIE: Objection; asked and answered;
15 argumentative.
16 THE WITNESS: No.
17 MR. GOLDMAN: Q. Do you know whether Google
18 asked to scan Harvard's copyrighted books?
19 MS. DURIE: You can answer that yes or no as
20 to whether you know.
21 THE WITNESS: Not to my knowledge.
22 MR. GOLDMAN: Q. Do you know whether Google
23 requested to copy copyrighted books that were held by
24 the Library of Congress?
25 MS. DURIE: Same -- same -- wait -- same

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1 objection.
 2 You can answer yes or no as to whether you
 3 know.
 4 THE WITNESS: Right.
 5 Not to my knowledge.
 6 MR. GOLDMAN: Q. Are you aware that that is
 7 one of the topics that you agreed to provide testimony
 8 on here today?
 9 A Yes.
 10 Q Did you take any steps to learn whether the
 11 Library of Congress or Harvard have requested to scan
 12 copies of copyrighted books?
 13 A Clarify the question, whether the -- just
 14 restate it. Whether -- restate it.
 15 Q Did you take any steps to learn whether
 16 Google had requested the Library of Congress or
 17 Harvard to scan their copyrighted books?
 18 A No.
 19 MR. GOLDMAN: I guess note for the record my
 20 objection to this.
 21 MS. DURIE: Although I can tell you, I don't
 22 think there's any non-privileged information that we
 23 have to answer -- that we have to provide. So I let
 24 him lay a foundation as to what he knows. But in
 25 terms of preparing him as a 30(b)(6) witness, I don't

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1 Q Did you ever hear of any discussions between
 2 anyone at Google and Ms. Peters regarding the scanning
 3 of copyrighted books?
 4 MS. DURIE: Again, you can answer that yes or
 5 no, and then we'll lay a foundation as to the source
 6 of your knowledge and whether it comes from a
 7 privileged source.
 8 THE WITNESS: Okay.
 9 So restate the question.
 10 MR. GOLDMAN: Could you read it back, please.
 11 (Whereupon, record read by the Reporter as
 12 follows:
 13 "Question: Did you ever hear of any
 14 discussions between anyone at Google and
 15 Ms. Peters regarding the scanning of
 16 copyrighted books?")
 17 THE WITNESS: And is the question with
 18 respect to -- with regard to the scanning of
 19 copyrighted books from the Library of Congress?
 20 Just to clarify the context so I understand,
 21 that's --
 22 MR. GOLDMAN: Q. Let's start there.
 23 A -- that's no.
 24 Q And what about not just books from the
 25 Library of Congress; what about books in general?

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1 think we have anything to provide that's not
 2 privileged.
 3 MR. GOLDMAN: And what privilege are you
 4 referring to?
 5 MS. DURIE: Based on the common interest
 6 agreement between Google and the libraries.
 7 MR. GOLDMAN: Note my objection to the
 8 assertion of that privilege, but I'll just reserve my
 9 right to bring that up at a later time. We can talk
 10 about that more at another time.
 11 Q Have you ever had any discussions with Mary
 12 Beth Peters?
 13 A Yes.
 14 Q And were those discussions in connection with
 15 the Google Books project?
 16 A Yes.
 17 Q And when -- how many times have you spoken
 18 with her?
 19 A I don't recall.
 20 Q And what was the nature of those discussions?
 21 A The nature of those discussions were
 22 discussions about our scanning of public domain books.
 23 Q Did you have any discussions with Ms. Peters
 24 regarding Google's scanning of copyrighted books?
 25 A No.

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1 MS. DURIE: Copyrighted books?
 2 MR. GOLDMAN: Yes, copyrighted books.
 3 THE WITNESS: Copyrighted books in general.
 4 Not to my knowledge.
 5 MR. GOLDMAN: Q. Have you ever had any
 6 discussions with anyone at Harvard University
 7 regarding the Google Books project?
 8 A Yes.
 9 Q And what were the nature of those
 10 discussions?
 11 A A variety of discussions. A majority of the
 12 discussions would have been about our operationalizing
 13 our agreement to scan public domain books with
 14 Harvard.
 15 Q And did you ever have any discussions with
 16 Harvard regarding Google's scanning of copyrighted
 17 books at Harvard?
 18 A Not to my recollection.
 19 Q And did you ever hear of any conversations
 20 between anyone at Google and anyone -- anyone at
 21 Harvard regarding Google's scanning of copyrighted
 22 books at Harvard?
 23 MS. DURIE: Same.
 24 You can answer it yes or no as to your
 25 knowledge.

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1 THE WITNESS: Any discussions.
 2 I cannot recall any specific knowledge of
 3 discussions with Harvard with respect to scanning of
 4 any copyrighted books.
 5 MR. GOLDMAN: Q. What about general
 6 knowledge?
 7 A So --
 8 MS. DURIE: And again, this is yes or no as
 9 to whether you have general knowledge, because then
 10 the question is going to be the source.
 11 THE WITNESS: Right. Yes.
 12 So yes, I believe I have general knowledge
 13 that I believe would be privileged.
 14 MS. DURIE: Okay.
 15 THE WITNESS: The knowledge that I would have
 16 about general --
 17 MR. GOLDMAN: Q. What was the --
 18 A -- discussion.
 19 Q -- what was the source? Without identifying
 20 the substance of that knowledge, what was the source
 21 of that knowledge?
 22 A What do you mean?
 23 Q Where did you learn this information from, or
 24 more specifically, from whom?
 25 A Right.

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1 the operationalization of the Google Books project
 2 with the library partners.
 3 MS. DURIE: If we're going to move to a --
 4 MR. GOLDMAN: Sure.
 5 MS. DURIE: -- new topic, why don't we take a
 6 break.
 7 MR. GOLDMAN: That's a good idea.
 8 (Recess taken.)
 9 MR. GOLDMAN: Q. Mr. Clancy, I was wondering
 10 whether you could take me through the process by which
 11 Google determines which books to digitize as part of
 12 its process.
 13 And I know that's a broad question, so if you
 14 need me to break it down, that's fine. But if you
 15 understand the question, then that would be helpful.
 16 A The library partner provides us information
 17 about the books that it wishes to scan or wants to
 18 make available. We look to that list to determine --
 19 to identify books that have been opted out, which
 20 means the publishers or rights holder has requested
 21 that we not scan it, identify books we've already
 22 scanned or identify books that we may scan at a
 23 different library. And then we provide a list of
 24 books from the library to provide to us, and they do
 25 so.

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1 I -- I -- I -- that is the distinction for me
 2 between specific and general about the knowledge I
 3 have, which is, in general, discussions with our
 4 counsel who was negotiating the contract and such as
 5 that.
 6 Q Are you aware that Mary Beth Peters submitted
 7 testimony before Congress that she -- that the Library
 8 of Congress had been approached by Google to scan
 9 copyrighted books from the Library of Congress, and
 10 the Library of Congress declined to do so? Are you --
 11 are you aware of that?
 12 A I am aware that she submitted testimony to
 13 Congress. I do not remember the specifics of that
 14 testimony.
 15 Q Okay. So if I -- if I represent to you that
 16 that was, in fact, her testimony, I guess my question
 17 is: Do you have any information or knowledge relating
 18 to that testimony?
 19 MS. DURIE: Lacks foundation.
 20 You can answer.
 21 THE WITNESS: No. I can tell you in my -- in
 22 my interaction with the Library of Congress, and I did
 23 interact with the Library of Congress, our discussions
 24 were all about their public domain books.
 25 MR. GOLDMAN: I'd like to turn now to the --

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1 Q When you say the library partner provides
 2 information about the books it wishes to make
 3 available, in what form is that information?
 4 A It would be in a metadata format, such as a
 5 marked record. I do not recall the specific format,
 6 but there is a specific format that provides the
 7 title, author, date of publication.
 8 Q We're talking about bibliographic
 9 information, generally?
 10 A Yes.
 11 Q We've now been speaking in sort of general
 12 terms with respect to all library partners. Maybe we
 13 can focus on the defendants that are in our case.
 14 Let's start with the University of Michigan.
 15 Did -- did University of Michigan provide -- to your
 16 knowledge, did they provide a list of particular
 17 works, or did they provide a list of all of their
 18 works?
 19 MS. ROACH: Objection.
 20 THE WITNESS: Yeah, and I should -- I should
 21 add with University of Michigan, at times they may
 22 have just provided us books, and then the assessment
 23 was done at -- prior to scanning, as opposed to based
 24 upon a list of books.
 25 MR. GOLDMAN: Q. Was that the case with any

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<p>1 other library partner?</p> <p>2 THE WITNESS: Stanford, and I don't know if</p> <p>3 there are any other ones.</p> <p>4 Q Do you know how -- do you know what criteria</p> <p>5 a library partner -- let me withdraw that.</p> <p>6 Do you have any knowledge about what criteria</p> <p>7 a library partner used to decide -- to decide which</p> <p>8 books it wanted to be scanned?</p> <p>9 MS. ROACH: Objection.</p> <p>10 MS. DURIE: Calls for speculation.</p> <p>11 THE WITNESS: As an example, University of</p> <p>12 Texas was focusing our partnership on the Benson</p> <p>13 collection to subset books in their collection, and</p> <p>14 those are the books they wanted us to digitize.</p> <p>15 MR. GOLDMAN: Q. What about University of</p> <p>16 Michigan?</p> <p>17 A I'm not aware of any selection criteria they</p> <p>18 used.</p> <p>19 Q Was it the goal of the partnership with</p> <p>20 Michigan to scan effectively all of University of</p> <p>21 Michigan's books?</p> <p>22 MS. ROACH: Objection.</p> <p>23 THE WITNESS: Many of their books may not be</p> <p>24 suitable for our scanning. We were open to scanning</p> <p>25 any of the books that Michigan was interested in</p>	<p>1 providing.</p> <p>2 MR. GOLDMAN: Q. What -- what books would</p> <p>3 constitute books that are not suitable for scanning?</p> <p>4 A Books that are too large for the scan</p> <p>5 station.</p> <p>6 Q You said that, I believe, the second step of</p> <p>7 the process you described was Google looking at a list</p> <p>8 to determine whether any books have been opted out.</p> <p>9 What do you mean by that?</p> <p>10 A Google has a policy that a rights holder can</p> <p>11 request that Google not scan their book as part of the</p> <p>12 library project. The term "opted out" means the</p> <p>13 rights holder has requested that the book be opted out</p> <p>14 of scanning.</p> <p>15 Q And what is the means by which a rights</p> <p>16 holder makes that request?</p> <p>17 A It provides us metadata to identify the book.</p> <p>18 Q Is there -- isn't there a form on Google's</p> <p>19 website that a rights holder can fill out?</p> <p>20 A I believe there is.</p> <p>21 Q And was there -- was that form always there</p> <p>22 from the beginning of the Google Books project?</p> <p>23 A No.</p> <p>24 Q When was that mechanism put into place?</p> <p>25 A I do not recall the exact date.</p>
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<p>1 Q Do you remember approximately when?</p> <p>2 A Approximately sometime in 2005.</p> <p>3 Q Had Google scanned books before that opt-out</p> <p>4 system was implemented?</p> <p>5 A Yes.</p> <p>6 Q Have -- do -- are you aware of instances in</p> <p>7 which rights holders have opted out of the scanning?</p> <p>8 A I am aware that a number of rights holders</p> <p>9 have opted out. I cannot identify a specific</p> <p>10 instance.</p> <p>11 Q What steps, if any, does Google take to</p> <p>12 advise rights holders of their option to opt out of</p> <p>13 the -- of the scanning process?</p> <p>14 MS. DURIE: This is beyond the scope, but</p> <p>15 I'll give you some leeway.</p> <p>16 THE WITNESS: So restate the question.</p> <p>17 (Whereupon, record read by the Reporter as</p> <p>18 follows:</p> <p>19 "Question: What steps, if any, does Google</p> <p>20 take to advise rights holders of their</p> <p>21 option to opt out of the -- of the scanning</p> <p>22 process?")</p> <p>23 THE WITNESS: We communicated by e-mail and</p> <p>24 other forms to publishers. Also, we communicated to</p> <p>25 the Authors Guild and other authors groups the policy,</p>	<p>1 and I believe we took other steps to make rights</p> <p>2 holders aware of their ability to do this.</p> <p>3 MR. GOLDMAN: Q. Do you know whether Google</p> <p>4 scanned -- Google scanned any unpublished works as</p> <p>5 part of its Google Books project?</p> <p>6 A I do not.</p> <p>7 Q Do you know whether it was the intent of the</p> <p>8 Google Books project to scan any unpublished books?</p> <p>9 A I do not.</p> <p>10 MS. DURIE: Vague.</p> <p>11 MR. GOLDMAN: Q. Do you believe that the</p> <p>12 majority of books in the Google Books -- from the</p> <p>13 scans from the Google Books project are published</p> <p>14 works?</p> <p>15 MS. ROACH: Objection.</p> <p>16 THE WITNESS: Yes.</p> <p>17 MR. GOLDMAN: Q. Do you believe that the</p> <p>18 vast majority of books that are in the Google Books</p> <p>19 project are published works?</p> <p>20 A Yes.</p> <p>21 Q Are you aware of any unpublished works that</p> <p>22 are in the Google Books database?</p> <p>23 MS. DURIE: Objection; asked and answered.</p> <p>24 MR. GOLDMAN: No.</p> <p>25 Q Well, you can still answer.</p>

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1 MR. GOLDMAN: I don't think I asked that. I
 2 asked whether he knows whether. Now I'm asking
 3 whether he's aware of any unpublished books that are
 4 in the Google Books database.
 5 THE REPORTER: Can you please keep your voice
 6 up.
 7 MS. DURIE: Sorry.
 8 THE WITNESS: I am -- I am not aware of any.
 9 MR. GOLDMAN: Q. You mentioned as part of
 10 the -- as part of the work flow that Google ultimately
 11 provided a list of works to the library; is that
 12 right?
 13 MS. ROACH: Objection.
 14 MR. GOLDMAN: Q. And by "list of works," I
 15 mean a list of works that Google was requesting the
 16 library to provide for scanning.
 17 MS. ROACH: Objection.
 18 THE WITNESS: I believe I've answered --
 19 asked and answered. I believe I described the
 20 process.
 21 MR. GOLDMAN: Q. I was just asking: Is
 22 that -- is that referred to as a pick list or a
 23 candidate list or something like that?
 24 A I believe at times it's been referred to as a
 25 pick list.

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1 MR. GOLDMAN: Q. And I can clarify it by
 2 saying if the answer changes based on which university
 3 we're referring to or which library partner we're
 4 referring to, then we can -- then let me know, and we
 5 can drill down in that way.
 6 A So not to my knowledge.
 7 Q And did Google select works for that list
 8 based upon genre considerations in general, to your
 9 knowledge?
 10 A Not to my knowledge.
 11 Q And did Google select works for that list
 12 based upon whether a particular work was -- is in
 13 print or out of print?
 14 MS. ROACH: Objection.
 15 THE WITNESS: Not to my knowledge.
 16 MR. GOLDMAN: Q. And in determining which
 17 books to put on the pick list, did Google consider
 18 whether a particular book had been published in
 19 electronic format?
 20 MS. ROACH: Objection.
 21 THE WITNESS: Not to my knowledge.
 22 MR. GOLDMAN: Q. And picking books for the
 23 pick list, did Google consider whether the author or
 24 the rights holder of a particular book was continuing
 25 to receive royalties on that book?

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1 Q Now, in constructing that -- is it okay if we
 2 call it a pick list?
 3 A (Witness nods head.)
 4 Q In preparing the pick list for the
 5 university, did Google select particular works for
 6 that list based upon whether the book was a fiction or
 7 nonfiction book?
 8 MS. ROACH: Objection. It's not clear what
 9 university or library you're talking about in these
 10 questions. I don't know if you're talking about a
 11 specific one or if you're speaking generally. I just
 12 want a clarification of what the question is directed
 13 at.
 14 MS. DURIE: I agree that it's vague.
 15 THE WITNESS: So restate it.
 16 MR. GOLDMAN: I'd like to restate the
 17 question, and I -- so we can restate the question, and
 18 we can clarify it if you need -- if you want me to
 19 clarify, I'm happy to.
 20 (Whereupon, record read by the Reporter as
 21 follows:
 22 "Question: In preparing the pick list for
 23 the university, did Google select particular
 24 works for that list based upon whether the
 25 book was a fiction or nonfiction book?")

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1 MS. ROACH: Objection.
 2 THE WITNESS: Not to my knowledge.
 3 MR. GOLDMAN: Q. And in selecting books for
 4 the pick list, did Google consider whether an unused
 5 copy of a particular book could be obtained on the
 6 commercial market? Period -- or question mark.
 7 MS. ROACH: Objection.
 8 THE WITNESS: Not to my knowledge.
 9 MR. GOLDMAN: Q. And did Google at any time
 10 make a determination whether to scan or not scan a
 11 book based upon the fact that a book was -- was
 12 deteriorating?
 13 MS. ROACH: Objection.
 14 MR. GOLDMAN: Q. Do you need me to define
 15 what I mean by "deteriorating"?
 16 A Yes.
 17 Q Because the book was in a brittle condition.
 18 A And the question about it is, did we --
 19 restate the question, then.
 20 Q Let me just formulate a whole new question.
 21 In deciding whether to scan a particular
 22 book, did Google ever consider whether the book was in
 23 brittle condition?
 24 A We -- the condition of the book was a factor
 25 to ensure it would be suitable for scanning.

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1 Q And if -- if the physical condition of the
 2 book was -- was poor, would that make it more likely
 3 or less likely that Google would scan the book?
 4 A There are certain books that are
 5 inappropriate for our scanning technology. And any
 6 determination is about whether or not that book is
 7 appropriate for the particular technology we are
 8 using.
 9 Q What do you mean by "appropriate"?
 10 A If our technology might damage the book.
 11 Q So are you saying that there were instances
 12 in which Google elected not to scan a particular book
 13 due to the physical condition of the book?
 14 A I believe there were instances.
 15 Q Are you aware of any instances in which the
 16 opposite occurred, and by that I mean that Google
 17 opted to scan a book because it was in poor physical
 18 condition?
 19 MS. DURIE: Objection; vague.
 20 You may answer.
 21 THE WITNESS: I don't -- I don't know.
 22 MR. GOLDMAN: Q. How many books does Google
 23 plan on scanning as part of the Google Books project?
 24 A There's not a number.
 25 Q Why do you say there's not a number?

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1 Books Fully Searchable EE 380." It appears that the
 2 author is "Daniel Clancy, Engineering Director, Google
 3 Print," and it's dated "18-July-05."
 4 Q Mr. Clancy, do you recognize this document?
 5 A Yes, I do.
 6 Q Did you prepare this document?
 7 A I believe I did.
 8 Q And did you prepare this document in
 9 connection with a presentation that you gave at some
 10 point in time?
 11 A I believe I did.
 12 Q And what were the circumstances of that
 13 presentation, if you recall?
 14 A I believe I gave a presentation at Stanford
 15 class EE 380.
 16 Q Do you recall when you gave that
 17 presentation?
 18 A No.
 19 Q I'd just like to ask you a couple of
 20 questions about that.
 21 A Yeah, yeah.
 22 Q Unfortunately, there's no page numbers, so
 23 there is --
 24 A Fine. If you show me a page, I will find it.
 25 Q There's a slide at the top that says

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1 A Because there isn't a specific number.
 2 Q Is Google planning on scanning all the books
 3 in the world as part of the Google Books project?
 4 A No.
 5 Q So what is the scope in terms of volume of
 6 the Google Books project? If you can't quantify it,
 7 can you describe it qualitatively.
 8 A Qualitatively, it's for the libraries we've
 9 been doing the partnerships with, the books that we
 10 both agree to scan.
 11 Q Are there any -- is there an estimate to how
 12 many books that would include?
 13 A There are various estimates to how many books
 14 are held in libraries.
 15 MR. GOLDMAN: Can we mark this as Clancy 1.
 16 (Document marked Clancy Exhibit 1
 17 for identification.)
 18 MR. GOLDMAN: I think you two have to share.
 19 MS. ROACH: That's fine.
 20 MR. GOLDMAN: Okay. I've marked as Clancy 1
 21 a document that I personally downloaded from the
 22 Internet using -- I found it using Google Search by
 23 Googling your name. I'm sorry to use Google as a
 24 verb -- by performing a Google Search on using your
 25 name. It's titled "Google Books Search Beta Making

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1 "Assessing the scale of the problem." It's about --
 2 it's about halfway through.
 3 A Show me the one right before and after, just
 4 so if I see them.
 5 Q There's a "Technical Challenges" slide, and
 6 then it's right after that.
 7 A I think I've found it. Okay. Got it. Yep.
 8 Q Can I see your copy. Do you have
 9 highlighting on your copy? I don't have highlighting
 10 on my copy. I must have -- I think because we printed
 11 your version in color --
 12 MS. DURIE: This is in color.
 13 MR. GOLDMAN: Yeah.
 14 Q I think that was on the original, although
 15 maybe you can verify whether -- do you believe the
 16 highlighting was on the original?
 17 A I believe it was.
 18 Q Can you explain to me what this slide
 19 represents.
 20 A I was just doing a thought exercise of the
 21 scale of such an initiative to give a rough sense.
 22 Q At the top it says "Number of books,
 23 30,000,000." Do you know, what does that number
 24 represent?
 25 A It's just an estimate of how many books may

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1 have been held by partners that might be part of the
 2 project.
 3 Q And do you know to date how many books Google
 4 has -- and let me say to date, how many volumes of
 5 books Google has scanned from its library partners,
 6 roughly?
 7 A Clarify when you say "how many volumes of
 8 books." I don't -- I don't understand what you mean
 9 by "volumes of books."
 10 Q By volume, I mean an independently bound
 11 book, even if there are multiple versions of a
 12 particular book or if, for example, a book was -- had
 13 the same title but had -- was written in five
 14 different bound volumes.
 15 A Yeah, so I don't know, using that
 16 characterization. An estimate is greater than
 17 20 million, including public domain, partner program.
 18 All the books we scanned is something in the
 19 neighborhood of 20 million. However, there's
 20 duplication. We may have scanned one book twice.
 21 Q Do you have an estimate of what portion of
 22 that 20 million is considered public domain by Google?
 23 A In the -- in the, I don't know, 4- or
 24 5 million range.
 25 Q So is that roughly 20 to 25 percent? Sorry.

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1 scanning using existing technology.
 2 Q What is Google's estimated cost of scanning a
 3 book through this -- through the library project?
 4 MS. DURIE: Objection; vague.
 5 Today?
 6 MR. GOLDMAN: Today.
 7 THE WITNESS: The estimate of the cost just
 8 of the scanning of the book, not of the development of
 9 the technology, would be \$10, estimate.
 10 MR. GOLDMAN: Q. What if you include the
 11 development of the technology that was used to scan
 12 the books and --
 13 A Are --
 14 Q Sorry.
 15 A -- are you looking for a per-book cost, or
 16 are you looking for an aggregate of how much we spent?
 17 Q Let's -- since we're talking about per book,
 18 why don't we stick there, and then we can do an
 19 aggregate.
 20 A It's harder for me to translate into a
 21 per-book --
 22 Q So let's do it --
 23 A -- cost for engineering.
 24 Q So let's do an aggregate cost.
 25 What is -- to date, what is the aggregate

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1 A Oh, yes.
 2 Q Okay. Do you believe that 30 million is a
 3 decent estimate of the number of books that Google
 4 intends to scan as part of the books project?
 5 A No telling.
 6 Q Do you know -- do you have a rough estimate
 7 of the number of works remaining at the library
 8 partners for scanning?
 9 A I do not.
 10 Q Does anyone at Google that you're aware of?
 11 MS. DURIE: Calls for speculation.
 12 THE WITNESS: I don't know.
 13 MR. GOLDMAN: Q. If you look on this chart,
 14 it has something that says "PBs per year." Do you
 15 know what that means?
 16 A Petabytes.
 17 Q And there's also a line here that says
 18 "Market cost per book."
 19 What does -- what does market cost per book
 20 mean?
 21 A This is an initial estimate of just picking a
 22 number that was saying, what if it cost you \$50 a
 23 book.
 24 Q \$50 to purchase the book?
 25 A To scan. To scan. But what is the cost of

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1 cost to Google to -- to develop the technology?
 2 THE WITNESS: And let me just ask that some
 3 of these numbers which may not be public -- so how
 4 does -- refresh my memory about numbers that we
 5 currently consider not public information.
 6 MS. DURIE: I think the answer is we'll
 7 designate it under the protective order.
 8 THE WITNESS: So meaning -- meaning I answer?
 9 MS. DURIE: Yes.
 10 THE WITNESS: But then we might then --
 11 MS. DURIE: Yeah, and let me do this. Let me
 12 designate this transcript under the protective order
 13 in light of that comment that you're expressing. And
 14 you can answer the question --
 15 THE WITNESS: Right.
 16 MS. DURIE: -- even to the extent the number
 17 is not public.
 18 MS. ROACH: Highly confidential?
 19 MS. DURIE: Yes, highly confidential, yes.
 20 THE WITNESS: So I would estimate that we've
 21 spent above \$300 million.
 22 MR. GOLDMAN: Q. And what -- what does that
 23 number include? What cost does that number include?
 24 A That would include the operational cost of
 25 scanning a book for both manpower and equipment for

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<p>1 the scanning. It would include cost of maintaining 2 those books after we've scanned them and the 3 technology development. In fact, as I go through the 4 list of things, it's -- it's probably more in the 5 neighborhood of 350 million if you add everything up. 6 Q Did Google develop its own proprietary 7 hardware to scan the books? 8 A We developed our own scan stations. 9 Q And did it also develop its own software as 10 part of that process? 11 A Yes. 12 Q And those costs are included in this 13 350 million? 14 A The estimate for the development of the 15 technology. 16 Q So it -- if I were to ask you, what is the 17 estimated cost to Google of the Google Book Search 18 project, would the answer be the same? 19 A I -- I would have a harder time -- I don't 20 know if that number adequately reflects the cost of 21 the servers to run the service, and -- and I don't 22 know that number very well right now. So I don't know 23 if that number would -- you know, whether or not that 24 would end up being higher because of the cost of 25 running the service.</p>	<p>1 Q Does that number -- does the 350 million 2 number take into account the cost to ingest the 3 digitized content into the Google index? 4 A Yes. 5 Q But it doesn't take into account the cost to 6 store the content; is that right? 7 A It may not take into account the cost to 8 provide a response for each query. 9 Q So that number -- so that number does include 10 the cost to store the content; is that right? 11 A To store the content -- it's an estimate. 12 Q Correct, an estimated cost, yes. 13 A An estimate, yes. 14 Q Did Google reimburse any of its library 15 partners for costs they incurred in connection with 16 the Google Book project? 17 A I believe so, for certain costs. 18 Q And which costs did it reimburse the library 19 partners for? 20 A For some of the cost of -- of putting the 21 books on the carts and handing us the carts. 22 Q So is it fair to say that Google was 23 subsidizing -- withdrawn. I don't want to say that. 24 A They were on the edge of their seat. 25 Q No.</p>
Page 60	Page 61
<p>1 But Google reimbursed the library -- certain 2 library partners for expenses they incurred in man 3 hours spent to collect works from the libraries; is 4 that fair to say? 5 MS. ROACH: Objection. 6 THE WITNESS: I think I -- I'm not sure. 7 MR. GOLDMAN: Q. And do you know -- do you 8 have an estimate of the amount of money that Google -- 9 A No. 10 Q -- spent to reimburse universities? 11 A No. 12 Q Do you know which library partners Google 13 reimbursed funds to? 14 And I apologize for ending so many sentences 15 in prepositions. 16 A No. 17 MR. GOLDMAN: What was my last question? I'm 18 sorry. 19 (Whereupon, record read by the Reporter as 20 follows: 21 "Question: Do you know which library 22 partners Google reimbursed funds to?") 23 MR. GOLDMAN: Q. And so do you know how much 24 money Google reimbursed to the University of Michigan? 25 A No.</p>	<p>1 Q Do you know how much money they reimbursed to 2 any particular -- 3 A No. 4 Q -- library partner? 5 A No. 6 Q How many -- did Google set up scanning 7 facilities as part of the Google Books project? 8 A Yes. 9 Q How many scanning facilities does Google 10 have? 11 A Today? 12 Q Today. 13 A I'm not sure of the exact number. Three to 14 five. 15 Q And where are those facilities located? 16 A Again, this is -- you know, one in Michigan. 17 Q Is that in Ann Arbor, Michigan? 18 A Yes. 19 We have one in the Bay Area, we have one in 20 Munich, and we have some smaller ones potentially in 21 other European libraries. 22 Q Have there been scanning facilities at other 23 times? 24 A We had one in the Massachusetts area, and I 25 believe it is -- it is no longer operating.</p>

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<p>1 Q And do you know when that stopped operating?</p> <p>2 A Not -- not exactly, no.</p> <p>3 Q Do you know which -- did library partners</p> <p>4 send -- or did one or more library partners send their</p> <p>5 books to that facility for scanning?</p> <p>6 MS. ROACH: Objection.</p> <p>7 THE WITNESS: One or more library partners</p> <p>8 sent the books to all -- all the facilities had books</p> <p>9 come from multiple library partners.</p> <p>10 MR. GOLDMAN: Q. Do you know where -- who --</p> <p>11 who decided which -- as between Google and a library</p> <p>12 partner, who decided where the books would be sent?</p> <p>13 A I believe that was a discussion.</p> <p>14 Q Do you know where University of Michigan sent</p> <p>15 its books for scanning?</p> <p>16 A To the facility in Michigan.</p> <p>17 Q And -- and did University of California send</p> <p>18 its books to the facility in the Bay Area?</p> <p>19 A Predominantly. It may have sent them to</p> <p>20 others at some point.</p> <p>21 Q And what about the University of Wisconsin?</p> <p>22 Do you know where it sent its books for digitization?</p> <p>23 A No.</p> <p>24 Q And what about Indiana University?</p> <p>25 A I'm not sure.</p>	<p>1 Q And what about Cornell?</p> <p>2 A I don't know.</p> <p>3 Q Could you describe the steps that are taken</p> <p>4 to digitize a book.</p> <p>5 A The -- the book is placed on the scan</p> <p>6 station. The scan station has a cradle that holds the</p> <p>7 book open but not flat. The operator starts at the</p> <p>8 beginning of the book. He has a pedal, and he clicks</p> <p>9 the pedal. A picture is taken of both pages. The</p> <p>10 operator turns a page and clicks the pedal again.</p> <p>11 Another picture is taken. And it continues until</p> <p>12 the -- all the pages in the book have been scanned.</p> <p>13 Q And then what happens?</p> <p>14 A Then the images are processed. There's a</p> <p>15 process called dewarping, which is -- since the pages</p> <p>16 are curved, it flattens out the image.</p> <p>17 Then it -- a process of cleaning, which is</p> <p>18 making the text or images -- and eliminating any other</p> <p>19 spurious marks or other things that might be in there.</p> <p>20 Then you do optical character recognition,</p> <p>21 which processes the image and turns the words into</p> <p>22 text.</p> <p>23 And then there is a process which we call</p> <p>24 analysis, which is assessing the quality of the scan</p> <p>25 and doing things such as ordering the images,</p>
Page 64	Page 65
<p>1 determining if a particular image of a page is good or</p> <p>2 not.</p> <p>3 Our scanning technology -- if when we take an</p> <p>4 image we believe there may be a problem in the image,</p> <p>5 such as maybe there's blur, then at times we may,</p> <p>6 while the book is still being scanned, notify the --</p> <p>7 the operator that he needs to turn back and rescan</p> <p>8 some pages. So analysis will pick which of the pages</p> <p>9 is the best image we have of a particular page.</p> <p>10 And at times we might have scanned a book</p> <p>11 twice, which this analysis also would pick again the</p> <p>12 best image of a page to -- to consider for that book.</p> <p>13 Q So if I -- if I heard you correctly, the --</p> <p>14 as output from the scanning process, image files and</p> <p>15 OCR files are created; is that correct?</p> <p>16 A That's correct.</p> <p>17 Q And where are those files stored immediately</p> <p>18 after they are scanned?</p> <p>19 A Within the scanning facility.</p> <p>20 Q And do you mean on a -- on a computer server</p> <p>21 inside of the -- that's physically located inside of</p> <p>22 that scanning facility?</p> <p>23 A Yes.</p> <p>24 Q And what happens to those files, as a general</p> <p>25 practice, after they're -- they're created and stored</p>	<p>1 on that server?</p> <p>2 MS. ROACH: Objection.</p> <p>3 THE WITNESS: They are encrypted and then</p> <p>4 transferred to a central server of Google's.</p> <p>5 MR. GOLDMAN: Q. And where is that central</p> <p>6 server located?</p> <p>7 A All -- various different places.</p> <p>8 Q It's a distributed server; is that why?</p> <p>9 A There are lots of data centers.</p> <p>10 Q You said that the files are encrypted and</p> <p>11 transferred. What happens to the files that were</p> <p>12 initially stored at the scanning facility?</p> <p>13 A They are deleted.</p> <p>14 Q What -- how do you ensure that those files</p> <p>15 are deleted -- and not you. I mean, how does Google</p> <p>16 ensure that those files are deleted?</p> <p>17 A I -- I'm not sure.</p> <p>18 Q Now, once the files are transferred to the</p> <p>19 central server, what happens to them next?</p> <p>20 A First, the analysis process that I described,</p> <p>21 some of that may occur on the servers within the</p> <p>22 scanning facility, and some of those steps may occur</p> <p>23 once they're on the central server.</p> <p>24 So when I described the process that ended up</p> <p>25 producing the images and the text, then once that's on</p>

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<p>1 the central server, then we index the text so that it 2 can be searchable at Google.</p> <p>3 Q Does Google create additional copies of the 4 underlying files that are stored on its central 5 servers?</p> <p>6 MS. ROACH: Objection.</p> <p>7 THE WITNESS: And what do you -- what do you 8 mean?</p> <p>9 MR. GOLDMAN: Well, you described earlier 10 that when somebody performs a search on Google, it 11 will search the index first, but that in order to show 12 a snippet, it needs to pull up the image files, for 13 example.</p> <p>14 Q Do those come from that copy that's stored on 15 the central servers, or are there -- is there another 16 copy that's created?</p> <p>17 A For serving, we will maintain a copy of the 18 images, and also maintain the text as part of the 19 index to generate snippets that are displayed.</p> <p>20 Q And are those files encrypted?</p> <p>21 A I don't know.</p> <p>22 MS. ROACH: Objection.</p> <p>23 MR. GOLDMAN: Q. Are you aware of any other 24 copies of those files that are made by Google?</p> <p>25 MS. ROACH: Objection.</p>	<p>1 THE WITNESS: Not that -- not that I can 2 recall.</p> <p>3 MR. GOLDMAN: Q. As part of the library 4 partner program, did Google ever provide copies of the 5 digital files to the partners that had provided the 6 original print books?</p> <p>7 MS. DURIE: Objection; vague.</p> <p>8 MS. ROACH: Objection.</p> <p>9 THE WITNESS: Google provides the 10 technological means by which our library partners can 11 obtain a copy of the books that we scan from that 12 library.</p> <p>13 MR. GOLDMAN: Q. Does each library partner 14 have access to that technological means for its own -- 15 for its own books?</p> <p>16 A Each library -- all of our library partners 17 have the ability to, either them or their agent, 18 obtain copies. However, there may be some limitations 19 with certain contracts. And I am unaware of -- so 20 there may be some limitations with particular 21 libraries. I'm not sure.</p> <p>22 Q You're -- are you saying you're not sure -- 23 you're not sure which libraries have those 24 limitations?</p> <p>25 A No, I'm not sure there are. In other words,</p>
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<p>1 I don't know if there are any limitations because each 2 library partner is different. And so we built it to 3 be generally available.</p> <p>4 Q Do you know whether any such limitations 5 exist with respect to the libraries that are 6 defendants in this case?</p> <p>7 A I do not know. I don't know.</p> <p>8 Q When you say "technological means," do you 9 mean -- what do you mean by that?</p> <p>10 A I mean that we provide a server that we 11 protect so that it is not accessible generally, but 12 the Library Partner is able to access that server to 13 make copies onto their systems.</p> <p>14 Q Is that -- do you refer to it by any 15 particular name?</p> <p>16 A GRIN.</p> <p>17 Q And what does GRIN stand for?</p> <p>18 A Google Return Interface.</p> <p>19 Q And has that always been the means by which 20 library partners obtain -- have the ability to obtain 21 copies of their books?</p> <p>22 A Yes. There was a -- at some point it may not 23 have been called GRIN, but yes.</p> <p>24 Q How does -- are the files that are made 25 available through GRIN independent of the files that</p>	<p>1 exist on Google's central servers?</p> <p>2 MS. DURIE: Objection; vague.</p> <p>3 THE WITNESS: I'm not --</p> <p>4 MR. GOLDMAN: Q. Are there separate copies 5 that are made available through GRIN?</p> <p>6 MS. ROACH: Objection.</p> <p>7 MS. DURIE: Same objection; vague.</p> <p>8 THE WITNESS: I guess I'm a little --</p> <p>9 MR. GOLDMAN: Let me rephrase the question. 10 THE WITNESS: Yeah, yeah.</p> <p>11 MR. GOLDMAN: Q. When a library partner 12 accesses GRIN to obtain digitized files, are they 13 downloading them directly from the Google central 14 server, or are they downloading them from a different 15 source?</p> <p>16 MS. ROACH: Objection.</p> <p>17 THE WITNESS: We have -- the Google Return 18 Interface as a server has -- has a version that is 19 placed on the server as part of the request that they 20 issued to -- to provide a copy.</p> <p>21 MR. GOLDMAN: Q. And is the version that's 22 placed on the server a different version than the copy 23 that exists on Google's central servers?</p> <p>24 MS. DURIE: Objection -- objection; vague.</p> <p>25 THE WITNESS: They -- they issue a request.</p>

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1 The -- they're -- yeah, I'm -- I'm kind of unclear.
 2 MR. GOLDMAN: Q. Well, maybe you can help
 3 explain this to me, how the files get from the central
 4 server to GRIN and then to the library partner.
 5 What's the process on the back end for that occurring?
 6 A Library partners issue a request that
 7 initiates the process. The -- the file is packaged in
 8 a particular format that includes the, you know,
 9 metadata, and there's a particular format of a package
 10 that -- so after the process is initiated, Google
 11 creates its package, and it is placed on the GRIN
 12 server, and the library would then issue another
 13 request for it to be transferred from the GRIN server
 14 to their server.
 15 Q When you say that a library partner issues a
 16 request, in the initial stage, what does -- what does
 17 that mean?
 18 A It means that they specify the -- the books
 19 that they are -- are trying to obtain a copy of.
 20 Q And how does the library partner know which
 21 works are available for obtainment?
 22 A They -- we have -- part of GRIN identifies
 23 the books from that library that we have scanned and
 24 that have been fully processed, and then the library
 25 can query that and identify a subset. And we use the

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1 can't think of anything specific. But certainly, in
 2 that process there may be other reasons why something
 3 is not made available. I don't know of anything
 4 specific.
 5 Q But, in general, is the -- the intent to
 6 provide access to the full corpus of fully scanned and
 7 fully processed works of a particular library partner?
 8 MS. ROACH: Objection.
 9 THE WITNESS: Yes.
 10 MR. GOLDMAN: Q. Are those files encrypted?
 11 A Yes.
 12 Q And what is the process by which a library
 13 partner can decrypt those works?
 14 A Each library partner we encrypted
 15 differently, meaning with a different key, and only
 16 that library partner has the key. So when they
 17 transfer a file to their servers, then they have an
 18 encryption key that allows them to decrypt the file.
 19 Q Is -- is it possible for a library partner to
 20 request the same work more than once?
 21 MS. ROACH: Objection.
 22 THE WITNESS: I don't know.
 23 MR. GOLDMAN: Q. Are you aware of any
 24 mechanism that would prohibit a library from
 25 downloading a particular work more than once?

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1 library bar code as the identifier.
 2 Q Now, does the list of books that's on GRIN of
 3 the books that have been scanned by the library and
 4 have been fully processed, does that include the
 5 aggregate of all works that have been scanned by
 6 Google?
 7 MS. ROACH: Objection.
 8 MS. DURIE: Yeah, that's vague.
 9 THE WITNESS: It does not include all works
 10 that have been scanned by Google.
 11 MR. GOLDMAN: Q. Then how is it limited?
 12 A For a given library partner, the works made
 13 available to them are the books we scan from that
 14 library partner.
 15 Q But does the list include all books that have
 16 been scanned for that particular library partner?
 17 MS. ROACH: Objection.
 18 THE WITNESS: That have -- that have been
 19 fully processed.
 20 MR. GOLDMAN: Q. And so then what I'm
 21 getting at is, it doesn't -- the list includes all
 22 books by a particular library partner that have been
 23 fully scanned and processed?
 24 A There may be some books that, for different
 25 reasons, may not end up on that list. I don't -- I

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1 A I'm not sure.
 2 Q You mentioned before that Google protects the
 3 GRIN server so that it's not generally accessible.
 4 How does Google do that?
 5 A The library partner identifies an IP address
 6 that -- and only requests from that IP would we
 7 respond to.
 8 Q Are there further credentials that are
 9 required?
 10 A I'm not sure. There may be additional
 11 password protection as well in addition to IP, and the
 12 files are encrypted as well.
 13 Q If somebody tried using an IP spoofer, would
 14 that work?
 15 A No.
 16 MS. ROACH: Objection.
 17 MR. GOLDMAN: Q. Why not?
 18 A To my knowledge, it would not work.
 19 Q Do you know why not -- why it wouldn't work?
 20 A To my knowledge, because the IP spoofers
 21 can't -- can't adequately imitate an IP so that it
 22 can't be detected.
 23 Q Are you aware of something called the
 24 HathiTrust?
 25 A I am.

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<p>1 Q And is that a service that, to your 2 knowledge, is run out of the University of Michigan? 3 MS. DURIE: Objection; vague. 4 THE WITNESS: Yeah. 5 MR. GOLDMAN: Q. Maybe you don't know. 6 A I -- yeah, I -- I believe it's a -- it's a 7 consortium of multiple libraries. 8 Q I've spoken with a number of librarians at 9 these -- at these universities that are library 10 partners. 11 A Okay. 12 Q They told me that there came a time when -- 13 for example, at the University of California when the 14 University of California stopped accessing GRIN 15 themselves and started -- and gave -- I believe gave 16 the HathiTrust or the University of Michigan the 17 ability to -- to download books directly. 18 A It is my understanding that they -- they 19 asked the HathiTrust to act on their behalf as their 20 agent in obtaining copies of books and managing those 21 files. 22 Q And is that true for all of the library 23 partners that are defendants in this case, to your 24 knowledge? 25 A I don't know.</p>	<p>1 Q Is that -- do you know if that's true with 2 respect to the University of Wisconsin? 3 A I don't know. 4 Q So you don't know whether the University of 5 Wisconsin accesses GRIN itself or whether it does it 6 through HathiTrust? 7 A Correct. 8 Q And is the answer the same for Indiana 9 University? 10 A It will be the same for each one specific. 11 Q So the only one that you know for sure that 12 does that is the University of California? 13 A Uh-huh. 14 Q Is that "yes"? 15 A Actually, even there I don't know for sure. 16 I believe that is the case for the University of 17 California, but... 18 Q Now, when the HathiTrust user accesses GRIN, 19 do they see a list of works from multiple locations, 20 or do they have to sign in for each particular school 21 for which they have -- 22 MS. ROACH: Objection; vague. 23 MR. GOLDMAN: It's confusing. I don't think 24 it was vague, but -- 25 THE REPORTER: Hold on. Hold on. I didn't</p>
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<p>1 get any of that. 2 MR. GOLDMAN: That's fine. I'll restate it 3 anyway. 4 Q You said that -- that at least certain 5 library partners gave HathiTrust the ability to 6 download books on their behalf; is that right? 7 A Yes. 8 Q So if I refer to that person or -- and 9 "person" broadly defined as HathiTrust user, will you 10 know what I'm saying? 11 A Yes. 12 MS. ROACH: Objection. 13 THE WITNESS: I believe I know what you're 14 saying. 15 MR. GOLDMAN: Okay. 16 Q And if a HathiTrust -- if that HathiTrust 17 user accesses GRIN, does that person see a list of 18 works from all library partners for which they've been 19 granted access, or just do they have to log on for 20 each particular school? 21 A I believe they have to log on for each 22 particular school, but I'm not certain. 23 Q Now, the process that you described by which 24 a library partner issues a request to GRIN and then a 25 copy is made available for download, is that -- is</p>	<p>1 that an automated process? 2 A Yes. 3 Q What was the purpose of -- of providing 4 copies of the digitized works to the library partners? 5 MS. DURIE: Objection; lacks foundation. 6 THE WITNESS: Yeah, I'm not sure. I don't 7 know. 8 MR. GOLDMAN: Q. Well, library partners, you 9 said, are able to obtain digitized copies of the works 10 from their collection -- 11 A Yes. 12 Q -- correct? 13 A Yes. 14 Q Do you know whether -- let's just start with 15 University of Michigan. Do you know whether 16 University of Michigan requested to obtain a copy of 17 the work that they provided to Google? 18 A I -- I -- 19 MS. ROACH: Objection. 20 THE WITNESS: -- do not know what -- how the 21 contractual discussions went. 22 MR. GOLDMAN: Q. And is that the same for 23 any library partner? 24 A Correct. Who requested that, I do not know. 25 Q And do you know whether -- do you know</p>

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1 whether Google at any time resisted providing a copy
 2 to the library partners?
 3 MS. ROACH: Objection.
 4 MS. DURIE: Objection; argumentative and
 5 vague.
 6 But you can answer.
 7 THE WITNESS: I do not know of any cases
 8 where we resisted providing a copy.
 9 I do know that the CIC agreement was written
 10 such that the files were held in escrow based on --
 11 for some period of time or some criteria. And I do
 12 not recall the specifics of that contract where the
 13 CIC schools were not downloading. I believe they're
 14 in copyright, files that might be in copyright. I
 15 don't know the specifics of that contract.
 16 MR. GOLDMAN: Q. And do you know why the
 17 arrange -- why it was arranged in that way?
 18 MS. ROACH: Objection.
 19 THE WITNESS: No.
 20 MS. DURIE: We've been going for a little
 21 over an hour.
 22 MR. GOLDMAN: Yeah. Let's --
 23 MS. DURIE: Can we take a break?
 24 MR. GOLDMAN: -- let's take a break.
 25 (Recess taken.)

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1 Q Are there -- are there other uses that you
 2 can think of?
 3 A As part of Google -- the Google Books
 4 project. So there is one partnership effort where --
 5 called the N-gram project, where we use the books to
 6 determine word frequency usage over time.
 7 Q You said that was a partnership; is that
 8 right?
 9 A Not -- there -- there were -- it wasn't a
 10 partnership. The researchers were -- were employed by
 11 Google when they were doing the work with the books.
 12 Q Is that an example of so-called
 13 non-consumptive research?
 14 A Yes.
 15 Q And when did that project take place?
 16 A A few years ago. I don't recall
 17 specifically.
 18 Q And that project has suspended?
 19 A I do not know of active research. There is a
 20 server up that is accessible called the N-gram Viewer.
 21 Q Is that publicly accessible?
 22 A Yes.
 23 Q What content is stored on that system?
 24 A Simply the frequency. So N-gram is a
 25 combination of words. N is the number of words in the

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1 MR. GOLDMAN: Q. What uses does Google make
 2 of the books that it scans?
 3 MS. ROACH: Objection.
 4 MS. DURIE: It's vague.
 5 But you can answer it.
 6 THE WITNESS: We make the books searchable.
 7 We index and search them so that they're used online,
 8 and they're -- that's the primary use.
 9 MR. GOLDMAN: Q. Are there other secondary
 10 uses?
 11 A There have been other second -- other uses,
 12 such as analysis or learning models for machine
 13 translation, as an example.
 14 Q And is that -- when you say "machine
 15 translation," is that the Google Translate product?
 16 A Yes.
 17 Q And how does that work -- not how does Google
 18 Translate work. How do -- how does Google use books
 19 that are scanned as part of this project as part of
 20 Google Translate?
 21 A And I do not know if -- I do not know if
 22 anything is currently being used as part of Google
 23 Translate. I know that research has experimented with
 24 whether or not it was useful. I do not know if it is
 25 being used actively.

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1 sequence. And that server knows that, for a given
 2 N-gram, how many times that appeared in a book in a
 3 given year.
 4 Q So that system does not have image files on
 5 it?
 6 A No.
 7 Q And it does not have --
 8 A It doesn't have a copy of the books.
 9 Q -- it does not have OCR text of the books?
 10 A No.
 11 Q Is the content from the books being used as
 12 part of Google Knowledge Graph?
 13 A Not to my knowledge.
 14 Q But it might be; is that right?
 15 MS. DURIE: Objection; asked and answered;
 16 calls for speculation.
 17 THE WITNESS: Not to my knowledge.
 18 MR. GOLDMAN: Q. You said the primary use of
 19 the books is for the Google Search Engine; is that
 20 right?
 21 A Uh-huh.
 22 Q You have to say "yes."
 23 A Yes, yes.
 24 Q Could you -- could you explain what you mean
 25 by that.

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<p>1 A When people come to Google.com and issue a 2 query, this is part of the index. There also is an 3 ability to restrict a query just to books. It's in 4 the left-hand controls so that when you issue a query, 5 you can say, Run this query, but just over the books. 6 So that's what I referred to. 7 Q Now, when the results page is shown after 8 such a query, does it contain advertisements? 9 A On Google.com, yes, it might. 10 Q So the results page containing advertisements 11 may also contain links to books; is that correct? 12 MS. ROACH: Objection. 13 MR. GOLDMAN: Q. Books on -- books on Google 14 Books? 15 MS. DURIE: Objection; vague. 16 MR. GOLDMAN: Q. Should I ask it 17 differently? 18 A Yes. 19 Q Let's do that. 20 So when I -- when I conduct a query at 21 Google.com, one or more results on a page could link 22 to content from Google Books; is that correct? 23 MS. DURIE: Objection; vague. 24 MR. GOLDMAN: Which part is vague? 25 MS. DURIE: Content on Google Books. It's</p>	<p>1 unclear whether you're referring to the content of a 2 book or to a search result. 3 MR. GOLDMAN: Okay. 4 Q When I conduct a query -- I withdraw that 5 question, though. Let me try to clarify. 6 When I conduct a query at Google.com, one or 7 more results on the results page could link to a 8 Google Books page; is that correct? 9 MS. ROACH: Objection. 10 MS. DURIE: You can answer. 11 THE WITNESS: Yes. 12 MR. GOLDMAN: Q. And that results page could 13 display advertisements? 14 A The -- 15 Q The search results page. 16 A That includes -- a link to a Google Books 17 result may include advertising. 18 Q Have you or anyone else at Google ever 19 attempted to determine how much advertising revenue is 20 attributable to the search results that link to 21 content or to pages on Google Books? 22 MS. DURIE: Calls for speculation. 23 You can answer. 24 THE WITNESS: No. 25 MR. GOLDMAN: Q. Are you able to estimate in</p>
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<p>1 any way, shape or form the amount of revenue that is 2 attributable to the content from -- from the content 3 that is part of the index that -- let me withdraw that 4 question. 5 Do you have any sense of the amount of 6 advertising revenue that is -- that can be attributed 7 to search results that link to Google Books pages? 8 MS. DURIE: Objection; vague. 9 You can answer. 10 THE WITNESS: I believe it is zero. 11 MR. GOLDMAN: Q. So you believe that Google 12 obtains no revenue -- advertising revenue at all from 13 the information that's obtained on -- that was 14 obtained through the Google Books program? 15 A You talk about the Google Books program. Can 16 you clarify when you are talking about the Google 17 Partner program, the public domain books from the 18 Google Library project, or the in copyright -- the 19 potentially in copyright books from the Google Library 20 project for which Google has not received permission 21 from a rights holder. 22 Q How much advertising revenue does Google 23 attribute to search results that link to pages with 24 information about potentially in copyright books for 25 which Google has not received permission from a rights</p>	<p>1 holder? 2 MS. ROACH: Objection. 3 THE WITNESS: Google does not attribute 4 revenue in that fashion. 5 MR. GOLDMAN: Q. But -- sorry. Continue. 6 A No, that's good. 7 Q But is it fair to say that some portion of 8 the revenue is attributable to those pages? 9 MS. ROACH: Objection. 10 MS. DURIE: Calls for speculation. 11 THE WITNESS: I think not. 12 MR. GOLDMAN: Q. Why do you say that? 13 A For those books, the frequency for which they 14 would be presented is quite small. So I believe that 15 any such estimate would be zero. 16 Q When you say that the frequency would be 17 small, doesn't that suggest that they would be 18 returned as a result of a query on some occasions? 19 MS. ROACH: Objection. 20 THE WITNESS: I do not know if they -- if 21 those books are returned on some occasions. 22 MR. GOLDMAN: Well, let me ask a -- let me 23 try to just put it in more concrete terms. 24 Q If -- if we're talking about a potentially in 25 copyright book for which Google has not received</p>

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<p>1 permission, the text from that work is still in the 2 Google index; correct?</p> <p>3 A Yes, although it is a -- I do not know -- I 4 do not know if that text is searched for all of the 5 general queries on Google.com. It may not be searched 6 for those queries.</p> <p>7 Q Is that the same answer for other books that 8 are part of the Google Books project?</p> <p>9 A For the partner program books, I'm pretty 10 certain that they are regularly searched.</p> <p>11 Q And how do the potentially in copyright books 12 differ?</p> <p>13 A Google has multiple servers. And when a 14 query is issued, when all the documents in Google's 15 index are searched, depends upon the likelihood of 16 there being a result that would be presented to the 17 user.</p> <p>18 And for in copyright books for which we do 19 not have permission, they may not be searched on those 20 queries simply because of the likelihood of that being 21 a good result.</p> <p>22 Q What is your basis for that knowledge? And 23 by "basis," I mean -- you say they may not be 24 searched. Why do you say they may not be? That --</p> <p>25 A I know at one point the full text from these</p>	<p>1 books was not searched for a general query on 2 google.com.</p> <p>3 Q And when you say "at one point," what do you 4 mean by that?</p> <p>5 A I know in the past that was the case, that we 6 did not search those books for general queries on 7 google.com, the full text of those books. The 8 metadata and the title of the book might be included, 9 but the full text was not searched.</p> <p>10 Q And do you know whether that is still the 11 case?</p> <p>12 A I do not know.</p> <p>13 Q Do you have any reason to believe that it 14 might still not be the case?</p> <p>15 MS. ROACH: Objection; calls for speculation. 16 THE WITNESS: I don't know.</p> <p>17 MR. GOLDMAN: Q. Now, when you said that the 18 full text was not searched for general Google 19 searches, what about searches that were performed at 20 books.google.com?</p> <p>21 A The full text would be searched for those.</p> <p>22 Q And would -- do advertisements appear on the 23 search page for books.google.com?</p> <p>24 A I do not know.</p> <p>25 Q Are you aware whether there was any -- ever a</p>
<p>Page 88</p> <p>1 time when advertisements would appear on results of 2 search.google.com?</p> <p>3 A Of books.google.com I believe, yes, there 4 were ads that -- on those searches at one point.</p> <p>5 Q And do you know when that -- do you know 6 whether that changed?</p> <p>7 A I do not know whether that changed.</p> <p>8 Q So you have no specific knowledge that that 9 has ever changed?</p> <p>10 A Correct.</p> <p>11 Q And so during that period of time when that 12 was the case, wouldn't it be the case that 13 advertisements would be displayed as a result of a 14 user's query that contained words from an in copyright 15 but unauthorized book?</p> <p>16 MS. ROACH: Objection. 17 MS. DURIE: Yeah, it's vague. 18 But you can answer. 19 THE WITNESS: That there would have been, for 20 a query, results that may have included books from in 21 copyright books for which -- that had been scanned as 22 part of the Library project, and there may have also 23 been ads on that page. 24 If a user clicks on the book result, then 25 that usually means they did not click on an</p>	<p>Page 89</p> <p>1 advertisement. And Google does not receive any money 2 for advertisements displayed that users do not click 3 on.</p> <p>4 MR. GOLDMAN: Q. Google doesn't receive any 5 revenue from the appearance of an ad on google.com?</p> <p>6 A If a user does not click on an ad on 7 google.com, then we do not receive revenue.</p> <p>8 Q Is that the same for all portions of the 9 Google engine?</p> <p>10 A That's a vague statement. 11 MS. DURIE: It is. 12 MR. GOLDMAN: Sorry. 13 MS. DURIE: It calls for speculation. 14 THE REPORTER: Okay. If we can try not to 15 speak over each other. 16 THE WITNESS: Sorry. Sorry. 17 MR. GOLDMAN: Q. But to the extent that a 18 user does click on that advertisement as a result of 19 such a search, Google would receive advertising 20 revenue; correct?</p> <p>21 MS. DURIE: Objection; vague. 22 But you can answer. 23 THE WITNESS: Yes, I believe so. 24 MR. GOLDMAN: Okay. 25 Q Was there ever a time that Google displayed</p>

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<p>1 advertisements on pages relating to in copyright works 2 that were not authorized? 3 MS. ROACH: Objection. 4 MS. DURIE: Yeah, it's vague. 5 THE WITNESS: Vague. 6 I will -- I will make a statement that we 7 have a page, all about the book page, where we would 8 display multiple snippets from a single book. And I 9 am unaware of any time when we ran advertisements on 10 that page. 11 MR. GOLDMAN: Sorry. Just give me one 12 second. I'm trying to find something. 13 Q If we turn back to the presentation, there's 14 a page entitled "Book Reference Page." It's probably 15 about a third of the way through. It's before the 16 page that we were looking at before. It's after 17 "Public Domain Books" and before "Finding Books." 18 A All right. 19 Q I think you had it. 20 A Did I pass it? 21 Q Yep. 22 So we're looking at a slide from the exhibit 23 that's been marked as Clancy 1 entitled "Book 24 Reference Page." 25 Could you -- could you describe to me what</p>	<p>1 this page represents. 2 A This particular page is a reference page for 3 a partner program book that is part of the partner 4 program that provides metadata information about the 5 book. 6 Q And so advertisements can appear on a partner 7 page -- a partner page book but not on a -- 8 A So -- right. To my knowledge, I -- I 9 actually don't think we even ran ads on partner 10 program pages such as this, meaning on their topical 11 [sic] page. 12 I don't believe that -- I think this was a 13 notional mock to show to partners how we might run 14 ads. 15 We did run ads on the pages that displayed 16 the content of partner program books. That revenue 17 was shared with partner programs. 18 In this case, this is about the book page. 19 Again, I don't think we actually ever ran ads such as 20 this. To my knowledge, if we did, it would have only 21 been on partner program books. 22 Q So it's 20 to 1:00. I don't think I have a 23 ton more to ask. 24 A I'm fine. I can go as long as you want. 25 Q Okay.</p>
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<p>1 A I don't need to break for lunch. 2 MS. DURIE: Okay. No. I'm -- assuming we're 3 not going to go until 5:00. 4 MR. GOLDMAN: No. Lunch is for sissies. 5 THE WITNESS: I definitely don't want lunch 6 now. 7 MS. DURIE: Actually, why don't we take -- if 8 that's the case, let me take a two-minute break and 9 get a Diet Coke. 10 MR. GOLDMAN: Yeah, me, too. 11 So off the record. 12 (Recess taken.) 13 MR. GOLDMAN: Q. If you turn back two pages 14 in the presentation that we were looking at, there's a 15 slide that's titled "A Closer Look at the Snippet 16 View." 17 This slide says that for books we scan that 18 are still in copyright, the user can view 19 bibliographic info and a few sentences around the 20 query. 21 Is that still true today? 22 A Yes, I believe so. 23 Q And has the parameters of what constitutes a 24 snippet changed over time? 25 A I don't know. Not to my knowledge.</p>	<p>1 Q So to your knowledge, Google always displayed 2 the same amount of text in response to a query? 3 A I'm not sure. 4 Q And is it still correct that for books Google 5 scans that are still in copyright, they only show the 6 same three snippets, never more? 7 A For a given query, the snippets we return are 8 the same for that query. 9 Q What if a new query is initiated? 10 A Then you'd get different snippets that are 11 relevant to that query. 12 Q Is there a limit to the number of queries 13 that a user can make on a particular work? 14 MS. DURIE: Objection; vague. 15 THE WITNESS: We have various limits to 16 protect the snippet view content. It's fairly -- 17 fairly detailed. 18 MR. GOLDMAN: Q. Do you -- do you know how 19 many books are identified as part of the general 20 Google search engine versus the books.google.com 21 search engine? 22 A Nope. 23 Q I'd like to turn now to some security issues 24 that my clients have with regard to the books that are 25 scanned as part of this program.</p>

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<p>1 Did you ever have any discussions with any of 2 your library partners regarding the security 3 mechanisms that they would employ at their libraries? 4 MS. DURIE: You can answer that yes or no. 5 THE WITNESS: Yes. 6 MR. GOLDMAN: And I take it by that statement 7 that you're not going to allow me to ask -- 8 MS. DURIE: Well, it depends. 9 MR. GOLDMAN: Okay. 10 MS. DURIE: Right. 11 So I think it depends on who was present in 12 the conversation, and whether it was a conversation 13 about any legal issues or just the transmission of 14 factual information. 15 MR. GOLDMAN: Okay. 16 Q So for this line of questions, please 17 restrict your -- your responses to only factual 18 matters, if you're able to parse that. 19 MS. DURIE: So -- so -- right. 20 So you -- if it's a communication in which 21 lawyers were involved or it was about the legal 22 implications, then I would assert privilege. If it 23 was simply a fact being communicated to you, separate 24 and apart from lawyers -- 25 THE WITNESS: Can I --</p>	<p>1 MS. DURIE: -- can we just -- 2 THE WITNESS: -- can I ask that -- can I -- 3 MR. GOLDMAN: Sure. Yes, you can. Please. 4 Yes. 5 (Recess taken.) 6 MR. GOLDMAN: Q. I believe you answered that 7 you had participated in discussions with library 8 partners regarding the security mechanisms that they 9 employ to protect the books that were being scanned; 10 is that right? 11 A Yes. 12 Q And can you tell me about those discussions. 13 A We generated specification of the 14 requirements of what they needed to do to protect 15 content. There were discussions around that document. 16 I do not remember any specifics about those 17 discussions. 18 Q Well, with whom did you have those 19 discussions? 20 A I know there was a discussion with John 21 Wilken. I don't remember who else may have 22 participated in any discussions. 23 Q Do you remember around when you had that 24 discussion? 25 A No.</p>
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<p>1 Q Was it -- was that discussion in connection 2 with HathiTrust? 3 A I -- 4 MS. DURIE: Objection; vague. 5 THE WITNESS: -- I believe that discussion 6 occurred prior to the creation of HathiTrust. 7 MR. GOLDMAN: Q. Did Google require -- 8 withdrawn. 9 Who was John Wilken? 10 A John Wilken is -- works for the University of 11 Michigan. 12 Q And were those specifications that were 13 developed only applicable to the University of 14 Michigan? 15 A No. 16 Q Who was required to follow those 17 specifications? 18 A We provided a copy to all of our library 19 partners. 20 Q Did Google take any steps to ensure that the 21 library partners complied with the specifications? 22 A I do not know. 23 MS. DURIE: Objection; vague. 24 MR. GOLDMAN: Q. Do you know whether Google 25 at any time reviewed the security measures employed by</p>	<p>1 its library partners? 2 A I do not know. 3 Q Do you know who would know? 4 A No. 5 Q So do you know whether Google's library 6 partners comply with the security specifications that 7 were provided to them? 8 MS. DURIE: Calls for speculation. 9 THE WITNESS: So -- so restate, then. 10 MR. GOLDMAN: Could you just restate the 11 question. 12 (Whereupon, record read by the Reporter as 13 follows: 14 "Question: So do you know whether Google's 15 library partners comply with the security 16 specifications that were provided to them?") 17 THE WITNESS: To the best of my knowledge, 18 they did. 19 MR. GOLDMAN: Q. What is your basis for 20 saying that? 21 A That when providing them the document in 22 discussions, I -- I believed they would implement 23 those security measures and that they did. 24 Q You said you only recall having discussions 25 with John Wilken at University of Michigan; is that</p>

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<p>1 right?</p> <p>2 A Correct.</p> <p>3 Q So what is your basis for believing that any</p> <p>4 other library partner complies with the security</p> <p>5 specifications?</p> <p>6 A We provide them specification, and my belief</p> <p>7 would be that they comply with them.</p> <p>8 Q Other than the fact that Google had provided</p> <p>9 those specifications, do you have any basis for</p> <p>10 believing that the library partners comply with the</p> <p>11 specifications?</p> <p>12 A I -- I know that the library partners use a</p> <p>13 great deal of care and -- in their storage of the</p> <p>14 books and in protecting their servers in general, and</p> <p>15 so I believe that they continue to protect that</p> <p>16 content.</p> <p>17 Q How do you know that they exercise great care</p> <p>18 in protecting the content?</p> <p>19 A I -- I don't -- I cannot -- I don't know</p> <p>20 anything in specifics that I can say.</p> <p>21 Q Do you just assume that they take great care?</p> <p>22 MS. DURIE: Objection; argumentative.</p> <p>23 You can answer.</p> <p>24 THE WITNESS: So how to handle anything is</p> <p>25 part of the settlement.</p>	<p>1 MS. DURIE: One moment, please. This is a</p> <p>2 privilege issue.</p> <p>3 MR. GOLDMAN: Sure.</p> <p>4 THE WITNESS: Yeah.</p> <p>5 (Recess taken.)</p> <p>6 MS. DURIE: So could you just read the</p> <p>7 question back.</p> <p>8 (Whereupon, record read by the Reporter as</p> <p>9 follows:</p> <p>10 "Question: Do you just assume that they take</p> <p>11 great care?")</p> <p>12 THE WITNESS: So I do have information, due</p> <p>13 to privileged communications, that supports --</p> <p>14 MS. DURIE: Don't --</p> <p>15 THE WITNESS: Yes, I do have information</p> <p>16 regarding -- that is through privileged communication</p> <p>17 regarding security measures.</p> <p>18 In addition, at no point did -- in other</p> <p>19 communications did they express any -- any intent not</p> <p>20 to adhere to the specifications.</p> <p>21 MR. GOLDMAN: Q. You participated in</p> <p>22 negotiations that led to the amended settlement</p> <p>23 agreement in the Google Books case; correct?</p> <p>24 MS. DURIE: Yes or no.</p> <p>25 THE WITNESS: Yes.</p>
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<p>1 MR. GOLDMAN: Q. And are you aware that that</p> <p>2 agreement contained a security standard?</p> <p>3 A Yes.</p> <p>4 Q Did you participate in constructing that</p> <p>5 security standard?</p> <p>6 A Yes.</p> <p>7 Q Are you familiar with that security standard?</p> <p>8 A I have not reviewed it recently, but I have</p> <p>9 been familiar with that security standard.</p> <p>10 MR. GOLDMAN: I have no intent to go into the</p> <p>11 security standard in great detail. I am going to mark</p> <p>12 it as an exhibit.</p> <p>13 THE WITNESS: Okay.</p> <p>14 MS. DURIE: Okay.</p> <p>15 MR. GOLDMAN: But I am going to ask a couple</p> <p>16 of questions about it.</p> <p>17 We can mark this Clancy 2.</p> <p>18 (Document marked Clancy Exhibit 2</p> <p>19 for identification.)</p> <p>20 MR. GOLDMAN: Q. If you could look through</p> <p>21 this and just tell me whether this document that's</p> <p>22 been marked as Clancy 2 appears to be the security</p> <p>23 standard that was part of the amended settlement</p> <p>24 agreement.</p> <p>25 A Yes, it appears to be.</p>	<p>1 Q Are there any differences between the</p> <p>2 security specification that was provided to the</p> <p>3 universities and the security standard that's set</p> <p>4 forth in this document?</p> <p>5 A Are there any differences? They're different</p> <p>6 documents. I expect there are differences.</p> <p>7 Q Fair enough.</p> <p>8 Are you able to assess whether the security</p> <p>9 obligations that are set forth in this security</p> <p>10 standard are greater than the obligations that were</p> <p>11 part of the security specifications?</p> <p>12 MS. DURIE: It's compound, but you can --</p> <p>13 THE WITNESS: So --</p> <p>14 MS. DURIE: -- answer it.</p> <p>15 MR. GOLDMAN: Sorry. I don't want to ask a</p> <p>16 confusing question. Was that -- which part was</p> <p>17 compound?</p> <p>18 MS. DURIE: Well, the problem is, there's</p> <p>19 a -- there's a lot of different requirements in each</p> <p>20 of the things. So whether it's greater or not is</p> <p>21 going to depend on the specific requirement you're</p> <p>22 talking about.</p> <p>23 MR. GOLDMAN: I guess --</p> <p>24 MS. DURIE: I understand --</p> <p>25 MR. GOLDMAN: Yes. Right.</p>

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<p>1 MS. DURIE: -- what you're trying to do. 2 MR. GOLDMAN: Right. 3 MS. DURIE: If not -- 4 THE WITNESS: Let me -- let me -- let me 5 provide an answer to that. 6 MR. GOLDMAN: Yes. 7 THE WITNESS: When we generated this 8 document, to the best of my knowledge, we generated a 9 document that reflected the ongoing security practices 10 that the libraries were already practicing at that 11 time. 12 To the best of my knowledge, the security 13 practices that they had been implementing were 14 consistent with the intent of this document at that 15 time. 16 MR. GOLDMAN: Q. And you say that because 17 you have knowledge of the security practices being 18 implemented by each of the library partners? 19 MS. DURIE: You -- you can answer yes or no 20 as to whether this is simply based on conversations or 21 whether it's based on any direct observation. 22 THE WITNESS: It's not based on direct 23 observations. It's based on conversations that this 24 was generated. 25 MR. GOLDMAN: Q. Conversations with whom?</p>	<p>1 A The library partners. 2 Q Each of the library partners? 3 A Some of the library partners. 4 Q Do you know whether Cornell University's 5 security practices -- 6 A I do not know specifically. 7 Q Do you know whether University of Wisconsin 8 security practices are consistent with this document? 9 A I do not know specifically. 10 Q What about Indiana University? 11 A I do not know specifically. 12 Q And what about University of California? 13 A I -- I believe those are consistent. 14 Q What is your basis for that belief? 15 A They participated in drafting this document, 16 and to my knowledge, the requirements -- 17 MS. DURIE: I don't want you to get into 18 details about communications with them. 19 THE WITNESS: Okay. 20 MS. DURIE: But if it's words -- 21 MR. GOLDMAN: Yeah. 22 MS. DURIE: -- it's just conversations. 23 THE WITNESS: Okay. 24 MR. GOLDMAN: Q. And is it -- would it be 25 the same answer for Michigan?</p>
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<p>1 A Yes. 2 Q Forgive me if I've asked this already. I 3 honestly don't recall if I asked this question. 4 Has Google at any time reviewed the security 5 controls that are implemented by any of the library 6 partners? 7 A I do not know. 8 Q Are you aware whether any of the library 9 partners conduct third-party audits of their security? 10 A I do not know. 11 Q Does Google engage third parties to conduct 12 audits of its security over the Google Books content? 13 MS. DURIE: You can -- I'll give you the 14 leeway to just let you answer yes, no, or I don't 15 know. 16 I mean, I think that's pretty far beyond the 17 scope. 18 THE WITNESS: I don't know. 19 MS. DURIE: Okay. 20 MR. GOLDMAN: Q. Are you aware of any 21 breaches of Google security relating to Google Books? 22 A No. 23 Q Are you aware of any attempted breaches of 24 Google's security relating to Google Books? 25 A Can you clarify. What is the scope of the</p>	<p>1 security that you're referring to? 2 Q Are you aware of any attempts that have been 3 made to obtain access to the content underlying the 4 Google Books program beyond what is supposed to be 5 provided through the publicly accessible interface? 6 A I am not. 7 MS. ROACH: Objection. 8 MR. GOLDMAN: Q. Are you aware of any 9 breaches of security at the library partners relating 10 to the books that they -- 11 A I am not. 12 Q -- hold? 13 MS. ROACH: Objection. 14 MR. GOLDMAN: Q. Are you aware of any 15 attempted breaches? 16 THE WITNESS: I wanted to give you a chance. 17 MS. ROACH: Sorry. 18 MR. GOLDMAN: She objects. 19 MS. ROACH: Well, my objection was to the way 20 your question was phrased, the security in the books. 21 It's not clear what you're speaking about. 22 MR. GOLDMAN: That's fine. I don't care. 23 THE WITNESS: They are not. 24 MR. GOLDMAN: Okay. 25 Q There have been breaches of security at</p>

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<p>1 Google in the past; correct? 2 MS. DURIE: Just in general? 3 MR. GOLDMAN: Just in general. 4 MS. DURIE: You can answer yes, no, or I 5 don't know. That's about as far as I'm going to let 6 it go. 7 THE WITNESS: I don't know. 8 MR. GOLDMAN: Q. Are you aware of something 9 called Operation Aurora? 10 MS. DURIE: Again, just yes, no, or I don't 11 know. 12 THE WITNESS: I don't know. 13 MR. GOLDMAN: Q. You testified earlier that 14 you estimated Google's costs incurred, as part of the 15 Google Books project, at approximately \$350 million; 16 is that right? 17 A It's a rough estimate. Yes. 18 Q Does Google have any plans to use the content 19 obtained through the Google Books project to recover 20 some of those costs? 21 A Can you clarify. There are different pieces 22 of the Google Books project, as we discussed before: 23 Partner program, library project and in copyright 24 public domain. 25 Q So that's three categories: Public domain,</p>	<p>1 library partners program and the in copyright books? 2 A Public domain, partner program, library 3 project, in copyright, potentially in copyright for 4 which we have not received permission. 5 Q Is there a term that you could use to 6 describe that last one? Books at issue, could we call 7 it? 8 A If you would like to deem that -- 9 MS. ROACH: I don't like that. 10 MR. GOLDMAN: If anyone has a suggestion. I 11 just don't want to keep repeating that same phrase 12 over and over. Could we just call it the third 13 category? 14 MS. DURIE: That's fine with me. 15 MR. GOLDMAN: Okay. 16 THE WITNESS: Yes. 17 MR. GOLDMAN: Let's go through each category. 18 Q And we'll just say the first category 19 relating to public domain works, are there any plans 20 to recover any of the costs incurred to scan those 21 works? 22 A Not to my knowledge. 23 Q And what about the second category for -- 24 A For partner program books? 25 Q -- partners?</p>
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<p>1 A Partner program books has evolved. Many of 2 the scans are also used as part of our e-book 3 offering. 4 Q And what about the third category? 5 A Not to my knowledge. 6 Q Were there ever any plans to recover costs 7 for the third category? 8 MS. DURIE: It's vague. 9 But you can answer. 10 THE WITNESS: Yeah, not to my knowledge. 11 MR. GOLDMAN: Q. Had the amended settlement 12 agreement been approved, wouldn't that have allowed 13 Google to recover some of the costs incurred for that 14 third category of books? 15 MS. ROACH: Objection. 16 MS. DURIE: Objection; argumentative and 17 calls for speculation. 18 THE WITNESS: And so should I -- 19 MS. DURIE: You can answer it. 20 THE WITNESS: -- answer it? 21 That -- that may have allowed for recovery 22 for some of the costs. 23 MR. GOLDMAN: Q. How would it not have? 24 MS. ROACH: Objection. 25 MS. DURIE: Same objections.</p>	<p>1 THE WITNESS: It would have had to have 2 succeeded. 3 MR. GOLDMAN: Q. What do you -- what do you 4 mean by that? What do you mean "it would have had to 5 have succeeded"? 6 A People would have -- people would have -- we 7 would have -- it needed to pull approval. Books would 8 have needed to have -- and offered to the public. We 9 would have had to build the service. People would 10 have had to use the service. 11 Q And if all those conditions had been met, 12 then it would have allowed Google to recover some of 13 the costs incurred as part of that piece of the 14 project? 15 MS. DURIE: Calls for speculation. 16 MS. ROACH: Objection. 17 THE WITNESS: Potentially, some of the costs. 18 MR. GOLDMAN: Let's mark this as Clancy 3. I 19 just have, I think, just one question about this 20 document. 21 (Document marked Clancy Exhibit 3 22 for identification.) 23 MR. GOLDMAN: Okay. What I've marked as 24 Clancy 3 is a -- entitled Declaration of Daniel Clancy 25 in Support of Motion for Final Approval of Amended</p>

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<p>1 Settlement Agreement.</p> <p>2 Q Do you -- do you recognize this document,</p> <p>3 Mr. Clancy?</p> <p>4 A I believe this is -- yes.</p> <p>5 Q And if you'd turn to the fourth page, which</p> <p>6 is the last page of the document, it has your</p> <p>7 signature.</p> <p>8 Is that your signature?</p> <p>9 A On the fifth page, yes.</p> <p>10 Q Fourth numbered page.</p> <p>11 A Oh.</p> <p>12 Q Engineers.</p> <p>13 A It says page 5 of 5.</p> <p>14 Q Oh, I see. If you look on -- if you look on</p> <p>15 the bottom, it says 4.</p> <p>16 A Yes, I know.</p> <p>17 Q This is a problem that occurs in the Google</p> <p>18 Books project, isn't it, where there are page --</p> <p>19 different page numbers?</p> <p>20 MS. ROACH: Objection.</p> <p>21 MR. GOLDMAN: Okay. If you -- I actually</p> <p>22 have a couple of questions about what's in here.</p> <p>23 Q In the third paragraph on the first page, it</p> <p>24 says:</p> <p>25 "In 2004, Google announced that it planned to</p>	<p>1 create an online database of all of the world's books,</p> <p>2 beginning with agreements with major university</p> <p>3 research libraries in the United States."</p> <p>4 A This isn't on --</p> <p>5 Q No. I was just verifying.</p> <p>6 Did I -- maybe I never asked you: Is that</p> <p>7 your signature on the last page?</p> <p>8 A Yes, yes, yes.</p> <p>9 Q Now, turning to paragraph 3, which is on --</p> <p>10 A Yes, I see it.</p> <p>11 Q When it says that Google announced that it</p> <p>12 planned to create an online database of all the</p> <p>13 world's books, is that -- is that an accurate</p> <p>14 statement?</p> <p>15 A I believe that is a -- a notional statement.</p> <p>16 Q An exaggeration?</p> <p>17 A An exaggeration, but --</p> <p>18 Q And so how would you characterize it so that</p> <p>19 it's not a notional statement?</p> <p>20 A That we were undertaking an effort to make</p> <p>21 accessible a very large number of books that had been</p> <p>22 published throughout time. But it never was going to</p> <p>23 be all of them.</p> <p>24 Q If you turn the page and look at the tenth</p> <p>25 paragraph, it says:</p>
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<p>1 "Google pays approximately \$2.5 million per</p> <p>2 year to license metadata from 21 commercial databases</p> <p>3 of information about books."</p> <p>4 Was that an accurate statement at the time</p> <p>5 that you made it?</p> <p>6 A I believe so.</p> <p>7 Q What information about books is being</p> <p>8 referred to here?</p> <p>9 A We would license metadata records from</p> <p>10 companies such as Balker [sic] as an example. It</p> <p>11 would include bibliographic information, titles,</p> <p>12 author,</p> <p>13 ISBN number, publication date and many other fields.</p> <p>14 This was particularly important for our</p> <p>15 partner program book because when they would send us</p> <p>16 the book, we would use these metadata sources to</p> <p>17 obtain the bibliographic information based upon the</p> <p>18 ISBN that was on the book when we scanned it.</p> <p>19 Q Other than these 21 -- or maybe there's a few</p> <p>20 more or less -- commercial databases, did Google pay</p> <p>21 any third parties any money for information that was</p> <p>22 provided to construct the Google Books database?</p> <p>23 MS. ROACH: Objection.</p> <p>24 MS. DURIE: It's vague.</p> <p>25 THE WITNESS: Yeah, it's kind of vague and</p>	<p>1 broad.</p> <p>2 MR. GOLDMAN: Why, thank you.</p> <p>3 THE WITNESS: I -- since it's vague and</p> <p>4 broad, not to my -- not to my knowledge. I should say</p> <p>5 not to my recollection.</p> <p>6 MR. GOLDMAN: Okay.</p> <p>7 Q Are there any instances in which Google has</p> <p>8 paid third parties for access to content that they</p> <p>9 provide?</p> <p>10 MS. ROACH: Objection.</p> <p>11 THE WITNESS: You know, could you clarify.</p> <p>12 MR. GOLDMAN: Q. Have you ever heard of a</p> <p>13 company called Metaweb, for example?</p> <p>14 A It's a company that Google acquired, I</p> <p>15 believe.</p> <p>16 Q And did -- does Metaweb have content? Do</p> <p>17 they publish content?</p> <p>18 MS. ROACH: Objection.</p> <p>19 THE WITNESS: Not to my knowledge.</p> <p>20 MR. GOLDMAN: Q. Are you aware of something</p> <p>21 called the Orphan Works Project?</p> <p>22 A That term has been used to describe many</p> <p>23 projects. So just with that term, I'm not sure which</p> <p>24 project you're referring to.</p> <p>25 Q Are you aware of an Orphan Works Project that</p>

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1 was undertaken by the University of Michigan?
 2 A Yes, I believe I know what you're referring
 3 to.
 4 Q Did you have any discussions with anyone at
 5 the University of Michigan regarding the Orphan Works
 6 Project?
 7 A Not to my recollection, no.
 8 Q Have you had any discussions with any person
 9 regarding the Orphan Works Project at the University
 10 of Michigan?
 11 MS. DURIE: Well, so either -- depending on
 12 what at the University of Michigan modifies. If it
 13 modifies the person, it's asked and answered.
 14 If it doesn't modify the person, but instead
 15 modifies the project, then I would instruct you to
 16 exclude from your answer communications that you've
 17 had with counsel and other privileged communications
 18 about the Orphan Works Project.
 19 MR. GOLDMAN: Well, first --
 20 THE WITNESS: Yeah.
 21 MR. GOLDMAN: -- let me -- let me restate the
 22 question.
 23 Q Have you had discussions with any person
 24 other than counsel and other than anyone at the
 25 University of Michigan regarding the Orphan Works

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1 MS. DURIE: You can answer that yes or no.
 2 THE WITNESS: No.
 3 MR. GOLDMAN: Q. You never spoke to Paul
 4 Courant about this lawsuit?
 5 MS. DURIE: Yes or no or I don't know.
 6 THE WITNESS: Not -- not to my recollection.
 7 MR. GOLDMAN: All right.
 8 Let me take a few minutes to look over my
 9 notes.
 10 MS. DURIE: Okay.
 11 (Recess taken.)
 12 MR. GOLDMAN: Okay. Just a couple of more
 13 questions.
 14 Q Do you believe that the inclusion of Google
 15 Books in Google's search engine provides a competitive
 16 advantage to Google over other search engines that
 17 don't have that content?
 18 MS. DURIE: Objection; calls for speculation.
 19 THE WITNESS: Can you clarify the different
 20 components of Google Books that you're referring to
 21 here. The three we had before?
 22 MR. GOLDMAN: Q. Well, any of them.
 23 A Do you mean all three?
 24 Any of them.
 25 Potentially.

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1 Project?
 2 A I don't recall any specific discussions.
 3 Casual conversations in a hallway, I don't know.
 4 Q Did you ever hear about any discussions
 5 between anyone at Google and anyone at the University
 6 of Michigan regarding the Orphan Works Project?
 7 MS. DURIE: Again, I would instruct you to
 8 exclude from your answer any communications with
 9 counsel.
 10 THE WITNESS: That were with counsel.
 11 No -- or I should say not to my recollection.
 12 MR. GOLDMAN: Okay.
 13 Q Did you ever have any discussions with anyone
 14 at University of Michigan regarding the creation of
 15 HathiTrust?
 16 A I don't recall any specific conversations; in
 17 particular, any specific non-privileged
 18 communications. I don't recall any specific
 19 privileged communications, either. But I don't recall
 20 anything specific. There may have been general
 21 discussions.
 22 Q Did you ever have any discussions with anyone
 23 at the University of Michigan regarding this lawsuit?
 24 By "this lawsuit," I mean the one that you're
 25 here testifying in today.

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1 Q Why do you say "potentially"?
 2 A Because potentially -- it's hard to
 3 determine.
 4 Q Isn't it Google's goal to acquire as much
 5 content as possible into its search engine?
 6 MS. DURIE: Objection; vague.
 7 THE WITNESS: Google would like to index as
 8 much content that would be relevant to a user's
 9 queries.
 10 Q And from a -- from a commercial perspective,
 11 why is that Google's goal?
 12 MS. DURIE: Objection; lacks foundation.
 13 THE WITNESS: That it would provide a better
 14 experience for users, the more content they can find
 15 that is relevant to their query.
 16 MR. GOLDMAN: Q. And does that mean that a
 17 user would be more likely to use Google as its search
 18 engine?
 19 MS. DURIE: Calls for speculation.
 20 THE WITNESS: Potentially.
 21 MR. GOLDMAN: Q. Does Google employ any
 22 mechanisms to prevent other search engines from
 23 indexing the content that is displayed as part of
 24 Google Books?
 25 A Do we have any mechanism of preventing them

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<p>1 from indexing that content? 2 Not a mechanism for preventing them. 3 Q Does Google employ the robots.txt protocol to 4 request that other search engines don't spider or 5 crawl the content that is displayed as part of Google 6 Books? 7 A Yes. 8 Q Why does Google do that? 9 MS. DURIE: Calls for speculation. 10 THE WITNESS: For our partner program books, 11 we do not make the text available to third-party 12 crawlers, so to protect that content. 13 MR. GOLDMAN: Q. And what about public 14 domain works? 15 A We do not make the text available to 16 third-party crawlers. 17 Q Why not? 18 MS. DURIE: Calls for speculation. 19 And again, if -- it may call for 20 attorney-client privilege, too. I don't know. So I 21 just want you to be sensitive to that in thinking 22 about the source of knowledge that you have. 23 THE WITNESS: Multiple reasons. 24 MR. GOLDMAN: Q. What are those reasons? 25 A One reason would be to protect the content.</p>	<p>1 Q What do you mean by "protect the content"? 2 A We would not want to put the text of these 3 books there for it all to be publicly crawled and 4 potentially reassembled. 5 Q Why not? We're talking about public domain 6 books. 7 MS. DURIE: We're talking public domain. 8 THE WITNESS: Oh, public domain? Oh, okay. 9 I'm sorry. I thought we were talking about the 10 category 3 books. 11 MR. GOLDMAN: Q. No. Public domain. 12 A Oh, for public domain. I'm sorry. 13 So we should clarify that my answer 14 previously was thinking of in copyright works -- 15 Q I see. 16 A -- which I -- so going back to public domain 17 works, do we -- I don't think we make the text 18 available. I'm pretty sure we do not. 19 Q And then why not if it's public domain? 20 MS. DURIE: And again, I would caution you to 21 not disclose information that comes from privileged 22 sources. 23 THE WITNESS: Right. 24 It's not a priority. 25 MR. GOLDMAN: Q. What do you mean by that?</p>
<p>Page 120</p> <p>1 A To make the text available takes extra work. 2 You have to make the text available. You have to put 3 it there so that it can be crawled. The text isn't 4 normally there. 5 Q I see. 6 But can -- can't images be crawled as well? 7 A Yeah, I do -- I believe that the images are 8 behind robots.txt. 9 Q And why are the images behind the robots.txt? 10 A I've never spent a great deal of time talking 11 about this. But we've -- we've never -- to my 12 recollection, we've never really thought of handling 13 public domain differently than everything else. 14 Q What do you mean by that? I'm not sure I 15 understand the response. 16 A We have a site that includes various books. 17 We use a particular approach for all the books on the 18 site for the partner program books. One reason in 19 particular is because the partners would not want us 20 to allow third parties to crawl the content. We 21 didn't handle public domain differently than the rest 22 of the books on their site. 23 I'm trying to recall whether there were any 24 other conversations -- 25 MS. DURIE: And Dan, again --</p>	<p>Page 121</p> <p>1 THE WITNESS: Yes. 2 MS. DURIE: -- I just want you to be careful 3 not to -- 4 THE WITNESS: Privilege. 5 MS. DURIE: Yeah, exactly. 6 THE WITNESS: I'm trying to recall any, and I 7 don't recall any. 8 MR. GOLDMAN: Q. Do you believe that one 9 reason that Google employs the robots.txt protocol in 10 connection with Google Books would be to -- because 11 another search engine's acquisition of that content 12 would competitively disadvantage Google? 13 MS. DURIE: Objection; calls for speculation. 14 And again, exclude from your answer any 15 privileged communications. 16 THE WITNESS: Yeah, it's hard -- with the 17 speculation and the privilege and all, I -- I have a 18 hard time saying. I don't know, yeah. 19 MR. GOLDMAN: Q. Are you aware that the 20 cooperative agreements between Google and at least 21 some of its library partners includes a provision that 22 obligates those partners to put the content from the 23 books behind a robots.txt wall? 24 A Yes. Now that you mention it, I do remember 25 that provision.</p>

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<p>1 Q And do you know why that provision was 2 included? 3 MS. DURIE: And again, I would caution you to 4 exclude any privileged communications. 5 THE WITNESS: Google was spending a fair 6 amount of money to digitize the public domain books. 7 And at that time we did not want them to be 8 distributed more broadly, and we had that provision. 9 Why? Various reasons why we had that provision. 10 Other reasons, I'm not sure. 11 MR. GOLDMAN: Okay. I have no further 12 questions. 13 THE WITNESS: All right. 14 You had some? 15 MS. ROACH: Did you have anything? 16 MS. DURIE: No. 17 MS. ROACH: Okay. I'm sorry. I just have a 18 few questions. 19 20 EXAMINATION BY MS. ROACH 21 MS. ROACH: Q. With respect to the Google 22 Library project, part of the Google Books project, 23 after Google scanned a book that it obtained from a 24 library, did Google then return the book to that 25 library?</p>	<p>1 MR. GOLDMAN: Wait. Objection. I don't 2 understand the first part of the question. 3 MS. ROACH: Okay. Which -- which part? 4 MR. GOLDMAN: You said as part of the Google 5 AdWords program? 6 MS. ROACH: No, no. I said with respect to 7 the Google Library project portion of the Google -- 8 MR. GOLDMAN: Okay. 9 MS. ROACH: -- Books project, because that's 10 how we talked about the two different portions. 11 THE WITNESS: Yes. 12 MS. ROACH: I was just trying to clarify that 13 at the outset. 14 Q After Google scanned a book that it obtained 15 from the library, did it then return that book to the 16 library? 17 A We provided technological means by which the 18 library can obtain a copy of the book. 19 Q I mean the physical book. 20 A Oh, oh. Yes, we returned the physical book 21 to the library. 22 Q I just wanted to clarify, because earlier we 23 talked about obtaining books. I just wanted to 24 clarify. 25 A Yes, yes, we returned the books -- the</p>
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<p>1 physical books to the library. I'm sorry. 2 Q When a book scanned by Google as part of the 3 Google Books project includes an image, does the 4 digital file that's resulted from -- results from the 5 scanning process include in it any descriptions of 6 those images? 7 A What do you mean by "descriptions of those 8 images"? 9 Q Either as part of the scanning process or the 10 processing of the file, is there any part of the 11 digital file that indicates what the image in the book 12 would show if you could see the image? 13 A So you're talking about pages that include a 14 picture -- 15 Q Yes. 16 A -- or something -- 17 Q Yes. 18 A -- such as that? 19 We have the ability to detect when an image 20 may be there. Sometimes it's wrong. And we 21 identify -- I believe we identify when there's an 22 image on a page and the coordinates of image. 23 But I do not know of any descriptions of the 24 image that is separate from just identifying the 25 coordinates on the page where an image may be present.</p>	<p>1 Q Okay. And the information that is included 2 in the file, the coordinates of the image or the fact 3 that the image exists on that page or may exist, is 4 that added manually to the file, or is that part of 5 the automated process? 6 A To the extent it is there, it would be part 7 of the automated process. 8 MS. ROACH: Those are the only questions I 9 have. 10 MS. DURIE: Okay. 11 (WHEREUPON, the deposition ended 12 at 1:52 p.m.) 13 ---oOo--- 14 15 16 17 18 19 20 21 22 23 24 25</p>

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