

COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (the "Agreement") is entered into by and between Google Inc., a Delaware corporation with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("Google"), and the Regents of the University of Michigan/University Library, Ann Arbor Campus, with its principal offices at 818 Hatcher South, Ann Arbor, MI 48109-1205 ("U of M"), and is effective on the date of the execution of this Agreement (the "Effective Date"). Google and U of M herein are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

Background

1. U of M is a leading academic institution and has amassed an enormous collection of works in various media.
2. Google is a leader in providing the public with access to billions of web pages through a search engine that processes requests in less than half a second, and responds to more than 150 million search queries per day.
3. Google and the U of M share a mutual interest in making information available to the public. The Parties believe that working collaboratively will create mutually beneficial knowledge about standards and automated methods for organizing and indexing digitized works and to refine standard requirements for repositories of digital content.
4. Accordingly, the Parties desire to enter a nonexclusive agreement whereby Google will digitize works from the U of M collection to include them in Google's search services, and to make them available to the University of Michigan for preservation, archival or other purposes of its choosing (e.g., inclusion in Michigan's search services).

Definitions

1. **DEFINITIONS.** Capitalized terms will have the meanings set forth below unless defined elsewhere in the Agreement.

1.1 "Available Content" means the U of M print book and journal Collection, but excludes Special Collections materials. Available Content also includes U of M Digital Content in an amount corresponding to the amount of digital content that Google provides to U of M via the U of M Digital Copy.

1.2 "Brand Features" means trade names, trademarks, service marks, logos, and other distinctive brand features, of which Google's Brand Features include but are not limited to Google, the Google logo, other marks that incorporate the word "GOOGLE," PAGERANK, and of which U of M's brand features include but are not limited to the University of Michigan name, University of Michigan identification marks, and the University Library name and logo.

1.3 "Digitize" means to convert content from a tangible, analog form into a digital representation of that content.

1.4 "Distribution Price" means an amount equal to or greater than a per-page amount multiplied by the number of Digitized pages involved. The per-page amount shall be equal to the amount charged by Google for distributing to the general public the same Digitized pages ("Google Amount"). If there exists no Google Amount for the same Digitized pages, the per-page amount shall be the amount charged by Google for distributing to the general public similar pages digitized pursuant to the same Project Plan ("Similar Google Amount"). To the extent no Google Amount or Similar Google Amount exists, the per-page amount shall be an amount mutually agreed upon in good faith by Google and U of M.

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

1.6 "Enterprise Search Services" means the Search Services provided by Google to companies for use by employees of those companies and others.

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

1.8 "Google Search Services" means the Search Services provided by Google directly through the web sites located at www.google.com and corresponding international and other domains (e.g., www.google.de, www.google.info, etc).

1.9 "U of M Collection". means materials identified in section 1.2 above.

1.10 "U of M Digital Copy" means a digital copy transferred by Google to U of M of the Available Content that is Digitized by Google.

1.11 "Partner Search Services" means the Search Services provided by Google to an End User via a partner site that has entered into an agreement with Google to provide some or all of the Search Services through its own website.

1.12 "Pilot Project" means the onsite work at the University of Michigan, beginning from the Effective Date of this contract and ending on April 15, 2005.

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

1.14 "Initial Term" means the first six years of the Project, including the Pilot Project period.

1.15 "Project Form" means a form, pursuant to this Agreement, that contains the details of a Project Plan, similar to the sample attached as Exhibit A.

1.16 "Project Plan" means a plan for implementing a Project. The Project Plan shall include the following: (1) instructions by U of M regarding how the Selected Content is to be collected and returned by Google; (2) if required, the amount of time available to U of M for performing conservation efforts; (3) the amount of time available to Google from receipt of the Selected Content until it is due to be returned to U of M; and (4) a budget for the Project.

1.17 "Requested Portion" means a portion of the U of M Digital Copy requested by a third party.

1.18 "Search Services" means the search services provided by Google to an End User pursuant to which the End User can view, inter alia, content consisting of or derived from the Google Digital Copy (subject to the restrictions set forth in this Agreement) in response to search or browsing requests.

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

1.20 "Services" means collectively the Google Search Services, the Partner Search Services, and the Enterprise Search Services.

1.21 "U of M Digital Content" means content that U of M already has in its possession in Digitized form, as of the Effective Date.

1.22 "Website," "World Wide Web," "the Internet," and other technical terms in this Agreement and project plans refers to the current common usage of such terms and successor facilities of equal or greater capability.

2. RESPONSIBILITIES

2.1 Identifying Content to be Digitized. The parties shall cooperate to identify Available Content to be Digitized. Upon agreeing to such Selected Content, the Parties shall cooperate in good faith and with diligence to develop a timetable for completing the Project Plan for the Selected Content. The Parties shall then memorialize the Project Plan in a Project Form.

2.2 Collecting the Selected Content. Upon commencement of a Project, U of M shall be responsible for performing any conservation efforts that U of M determines are required for the associated Selected Content. On a rolling basis, as this conservation effort is completed, U of M shall provide the conserved Selected Content to Google for Digitizing. If agreed upon by the parties in a particular Project Plan, this collection function may instead be assigned to Google.

2.3 Locating the Digitization Operation. For each Project, U of M shall attempt in good faith to provide Google with adequate physical space to Digitize the Selected Content. If U of M is unable to provide such space, U of M shall cooperate with Google to identify and obtain space that Google can use at reasonable rates. The location of any such physical spaces shall be mutually agreed upon by the parties.

2.3.1 Transporting and Storing the Selected Content. On a Project-specific and material-specific basis, U of M may authorize Google to remove some or all of the Selected Content from U of M premises to perform digitization in facilities controlled by Google. All risk of loss, damage, or destruction of the materials will lie with Google from the time Google accepts possession of the materials until such time as they are returned to U of M on U of M premises. Google will carry reasonably sufficient insurance against the risk of loss, damage or destruction of materials entrusted to Google's custody. In general, for all materials, Google will provide a transport method and temporary storage area that is reasonably clean, dry, cool, free from insects and other pests, protected from fire, and secure against theft and vandalism. Because the value of the materials and the environmental conditions necessary for transporting them and maintaining them in good condition will vary based on the particular materials involved, U of M will inform Google of the requirements for transport and storage of particular materials on a Project-specific basis. For insurance purposes, U of M (relying on guidelines from its Risk Management office) will provide Google with a good faith estimate of the value of any materials approved for removal from U of M premises, and will provide Google with an itemized list of any such materials.

2.3.2 On-Site (i.e., not transported) Conversion of Selected Content. The terms in 2.3.1 regarding insurance, accessibility to print materials for U of M users, and precautions taken to ensure protection of the materials shall also apply to materials digitized on-site in the Buhr storage facility.

2.4 Digitizing the Selected Content. Google will be responsible for Digitizing the Selected Content. Subject to handling constraints or procedures specified in the Project Plan, Google shall at its sole discretion determine how best to Digitize the Selected Content, so long as the resulting digital files meet benchmarking guidelines agreed to by Google and U of M, and the U of M Digital Copy can be provided to U of M in a format agreed to by Google and U of M. U of M will engage in ongoing review (through sampling) of the resulting digital files, and shall inform Google of files that do not meet benchmarking guidelines or do not comply with the agreed-upon format. Should U of M encounter a persistent failure by Google to meet these guidelines or supply the agreed-upon format, U of M may stop new work until this failure can be rectified. Any restrictions on Google's discretion shall be specified on a project-by-project basis via the corresponding Project Form(s) or by amendment to this Agreement.

2.5 U of M Digital Copy. Google agrees to provide to U of M a copy of all Digitized Selected Content that has been "Successfully Processed" within thirty (30) days after the Selected Content is Digitized, or in a timeframe mutually agreed by the Parties. Digitized Selected Content is "Successfully Processed" when Google determines it has satisfactorily gone through all stages of Google's digitization, post processing and quality assurance procedures (not to exceed thirty days for material received by Google, unless otherwise agreed to by the parties). Within thirty (30) days after the Selected Content is Digitized, or in a timeframe mutually agreed by the Parties, Google shall provide the U of M Digital Copy