

**ATTACHMENT E**

## **SAFE HARBOR PUBLIC DOMAIN PROCESS**

For purposes of determining whether the safe harbor in Section 3.2(d)(v)(3) of the Settlement Agreement is applicable to Google's use of a work, Google shall apply the factors and rules set forth in this Attachment E. Nothing in the Settlement Agreement requires Google to apply such factors or rules to any work but, if it does not do so, then Google shall not be entitled to such safe harbor for such work. Any determination by Google that a work is a Public Domain Book is solely for the purposes of Section 3.2(d)(v) and is not to be relied on or invoked for any other purposes, including determining whether a work is in fact in the public domain under the Copyright Act.

### **1. FACTORS**

#### **1.1 Copyright Date**

To ascertain a work's copyright date, at least two people shall review at least the title page (and other pages, as appropriate, if the copyright date does not appear on the title page) of a work. If, without communication between two of such reviewers, they each found the same copyright date, then that date is deemed to be the work's "Reviewed Copyright Date." If the reviewers did not find the same copyright date or the reviewers cannot determine a copyright date, Google shall search its own bibliographic and other records, and other records reasonably available to it. If Google determines that records from more than one source indicate the same copyright date, then that date may be deemed to be the work's "Reviewed Copyright Date."

#### **1.2 Publication Place**

To ascertain a work's place of publication, at least two people shall review at least the title page (and other pages, as appropriate, if the place of publication does not appear on the title page) of a work. If, without communication between two of such reviewers, they each found that either (a) a location within the United States is indicated as the apparent place of publication, or (b) if the place of publication is not apparent, at least one of the places set forth on the title page or elsewhere is within the United States, then the work is deemed to be a "Presumed U.S. Publication." If the reviewers did not find the same place of publication, Google shall search its own bibliographic and other records, and other records reasonably available to it. If Google determines that records from more than one source indicate the same place of publication, and that place is a location within the United States, then the work may be deemed to be a "Presumed U.S. Publication."

#### **1.3 Copyright Notice**

To ascertain whether a work bears a copyright notice complying with the Copyright Act ("Copyright Notice"), at least two people shall review at least the title page (and the copyright page, if a Copyright Notice is not on the title page) of a work. If, without communication between two of such reviewers, they each found that those pages do not contain a Copyright Notice, then the work is deemed "Presumably Does Not Contain a Copyright Notice." If the reviewers did not agree, and Google determines that the scanned images of a work do not contain a Copyright Notice, then the work may be

deemed “Presumably Does Not Contain a Copyright Notice.”

#### **1.4 Contemporaneous Publication Abroad**

To determine whether a work was first published in a country other than the United States or contemporaneously outside and within the United States, Google shall search its own bibliographic and other records, and other records reasonably available to it (*e.g.*, any online records of the United States Copyright Office or a copy thereof). If Google determines that the work was published in a country other than the United States either (a) prior to the work’s Reviewed Copyright Date or (b) within two years of the work’s Reviewed Copyright Date, then the work may be deemed “Presumably Contemporaneously Published Abroad.”

#### **1.5 Renewal**

To determine whether a work was renewed with the United States Copyright Office, Google shall search either the United States Copyright Renewal Records or a copy thereof. If such search discloses a renewal record for the work, then the renewal date of such work will be that work’s “Presumed Renewal Date.” If such search does not disclose a renewal record for such work, then such work is “Presumed Not Renewed.”

#### **1.6 Presumed Government Work**

To determine whether a work was published by the United States Government, at least two people shall review at least the title page (and, if there is a copyright page, the copyright page, if a claim of copyright does not appear on the title page) of the work. If, without communication between two of such reviewers, they each found that those pages indicate that the work was published by the United States Government and do not contain a claim of copyright by a Person other than the United States federal government, then the work is deemed to be a “Presumed Government Work.” If the reviewers did not agree with respect to such publication or such claim, Google shall search its own bibliographic and other records, and other records reasonably available to it. If Google determines that records from more than one source indicate that the work was published by the United States Government, then the work is deemed to be a “Presumed Government Work.”

#### **1.7 Registration and Registration Date**

To determine whether a work was registered with the United States Copyright Office and when it was registered, Google shall search either the United States Copyright Registration Records or a copy thereof. If such search discloses a registration record for the work then the registration date of such work will be that work’s “Presumed Registration Date.” If such search does not disclose a registration record for such work, then such work is “Presumed Not Registered.”

## **2. RULES FOR PRESUMED U.S. PUBLICATIONS**

### **2.1 Copyright Expiration by Copyright Date**

If (a) a work's Reviewed Copyright Date is before January 1, 1923 and (b) the work is a Presumed U.S. Publication, then Google may submit such work to the Registry as a Public Domain Book pursuant to Section 3.2(d)(v)(2).

### **2.2 Lack of Copyright Notice**

If a work (a) has a Reviewed Copyright Date before March 1, 1989, (b) is a Presumed U.S. Publication, (c) Presumably Does Not Contain a Copyright Notice, (d) is not Presumably Contemporaneously Published Abroad, and (e) is Presumed Not Registered or has a Presumed Registration Date that is not before or within five (5) years following the Reviewed Copyright Date, then Google may submit such work to the Registry as a Public Domain Book pursuant to Section 3.2(d)(v)(2). If a Reviewed Copyright Date is the year 1989 without a specific date, then it is deemed to be not before March 1, 1989.

### **2.3 Lack of Renewal**

If a work (a) has a Reviewed Copyright Date that is before January 1, 1964, (b) is a Presumed U.S. Publication, (c) is not Presumably Contemporaneously Published Abroad, and (d) is Presumed Not Renewed, then Google may submit such work to the Registry as a Public Domain Book pursuant to Section 3.2(d)(v)(2).

### **2.4 Government Works**

If a work is a Presumed Government Work, then Google may submit such work to the Registry as a Public Domain Book pursuant to Section 3.2(d)(v)(2).

## **3. RULE FOR PRE-1923 WORKS NOT PRESUMED U.S. PUBLICATIONS**

If a work (a) has a Reviewed Copyright Date that is before January 1, 1923, (b) is not a Presumed U.S. Publication, and (c) Presumably Does Not Contain a Copyright Notice, then Google shall search its own bibliographic and other records, and other records reasonably available to it (*e.g.*, any online records of the United States Copyright Office or a copy thereof) to determine if the work was either (i) published in the United States prior to or at the same time as the work's Reviewed Copyright Date ("U.S. Published Work"), (ii) subsequently republished anywhere with a Copyright Notice, or (iii) subsequently registered with the United States Copyright Office. If Google's search reveals that the work either (1) is a U.S. Published Work, (2) was republished with a Copyright Notice and the republished work has a Reviewed Copyright Date that is before January 1, 1923, or (3) was never republished or was republished with a Copyright Notice after January 1, 1923 and is reasonably determined by Google to be in the public domain (*e.g.*, by applying section 302 of the Copyright Act), then Google may submit the work to the Registry as a Public Domain Book pursuant to Section 3.2(d)(v)(2).

## **4. SAFE HARBOR NOTICES TO THE REGISTRY**

For each work as to which Google seeks the benefit of the safe harbor in Section 3.2(d)(v)(3) of the Settlement Agreement, Google shall disclose to the Registry (1) the

title, author and ISBN code (if available) of such work, (2) the facts ascertained and/or conclusions drawn by Google about the work pursuant to Sections 1.1 through 1.7 above (*e.g.*, the work's Reviewed Copyright Date), (3) the specific rule in Section 2 or Section 3 above upon which Google is relying for its determination that such work is a Public Domain Book and (4) if requested by the Registry, copies of any available supporting documents or records Google relied upon in making its determination, in each case to the extent permitted by Google's agreements with its Metadata providers.