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COMPLAINT

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2. Defendant Netflix, on information and belief, is a corporation organized under the laws of the state of Delaware, and has a principal place of business at 100 Winchester Circle, Los Gatos, CA 05032. Netflix may be served through its Counsel, Ryan M. Kent, Durie Tangri, 217 Leidesdorff Street, San Francisco, CA 94111.

JURISDICTION & VENUE

- 3. This is an action for infringement of a United States patent. Accordingly, this action arises under the patent laws of the United States of America, 35 U.S.C. § 1 et seq., and jurisdiction is properly based on 35 U.S.C. § 271 and 28 U.S.C. § 1338(a).
- 4. Venue is proper in this district under 28 U.S.C. §§ 1391(b-c) and 1400(b). Upon information and belief, the Defendant transacts or has transacted business in this judicial district, or committed and/or induced acts of patent infringement in this district.

PATENT INFRINGEMENT COUNT

- 5. On December 10, 2010, EIT filed a patent infringement action against multiple Defendants, including Netflix, in the Northern District of California (C-10-05623-WHA) before the Honorable William H. Alsup. On May 11, 2011, Judge Alsup held that the Defendants, including Netflix, were improperly joined. He dismissed all except the first-named Defendant and invited counsel to re-file against each Defendant in a separation action.
- 6. On October 27, 1998, United States Patent No. 5,828,837 ("the '837 patent") entitled "Computer Network System and Method for Efficient Information Transfer" was duly and legally issued. EIT holds the title by mesne assignments from the inventor, including the right to sue for past, present and future damages. A copy of the '837 patent is attached as Exhibit A. The '837 patent is directed to a method and system that maintains a profile for registered users and then transmits references to target information to the users based on their profile.
 - 7. Pursuant to 35 U.S.C. § 282, the '837 patent is presumed valid.
- 8. To the extent necessary, Plaintiff has complied with the notice and marking requirements of 35 U.S.C. § 287.
- 9. Netflix utilizes a website that provides commercial and non-commercial information or allow users to buy products or services. Its website allows users to register and

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create a user account, which includes a unique id such as a unique email address or a user defined unique username for ordering or accessing information. Netflix receives and stores information about the users in a database through the use of a web connected server. When a registered user accesses Netflix's website, references to commercial and non-commercial target information, such as advertisements, additional content on areas of interest or information about additional products, are transmitted to the user and displayed on his or her web accessible device including but not limited to a desktop computer, a laptop computer, a mobile phone or a game console. Netflix determines appropriate target information for each user based on the user profile information including but not limited to demographics, personal preferences, interests, past content viewing history and past purchase history.

- 10. Netflix, on information and belief, utilizes a computer network system and method for transferring information that infringes at least claims 40 and 41 of the '837 patent, by utilizing the features described in Paragraph 9 on at least its website www.netflix.com and/or other websites utilizing similar features. By making, operating, using and/or selling such websites, Netflix has infringed and continues to infringe, contribute to the infringement of, or induce the infringement of at least claims 40 and 41 of the '837 patent, either literally or under the doctrine of equivalents.
- 11. Accordingly, Netflix's acts of infringement of the '837 patent, as alleged above, have injured Plaintiff and thus, Plaintiff is entitled to recover damages adequate to compensate it for Netflix's acts of infringement, which in no event can be less than a reasonable royalty.

DEMAND FOR JURY TRIAL

12. Plaintiff hereby demands a jury trial on all claims and issues.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for entry of judgment:

- that Defendant Netflix, Inc. has infringed one or more claims, specifically claims
 and 41, of the '837 patent;
- 2. that Defendant Netflix, Inc. accounts for and pays to Plaintiff all damages caused by the infringement of the '837 patent, which by statute can be no less than a reasonable royalty;

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that Plaintiff be granted pre-judgment and post-judgment interest on the damages 1 3. 2 caused to them by reason of Defendant Netflix Inc.'s infringement of the '837 patent; that costs be awarded to Plaintiff; and 3 4. 5. that Plaintiff be granted such other and further relief as the Court may deem just 4 and proper under the current circumstances. 5 Respectfully submitted, 6 Dated: May 20, 2011 7 By:_ 8 Benedict O'Mahoney (SBN 1/52447) Mark W. Good (SBN 218809) 9 **TERRA Law LLP** 177 Park Avenue, Third Floor 10 San Jose, California 95113 Tel: (408) 299-1200 11 Fax: (408) 998-4895 Email: mgood@terra-law.com 12 Email: bomahoney@terra-law.com 13 ATTORNEYS FOR PLAINTIFF 14 15 16 17 18 19 20 21 22 23 24 25 26 27

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COMPLAINT