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 17 BLOCKBUSTER INC.

18 UNITED STATES DISTRICT COURT  
 19 NORTHERN DISTRICT OF CALIFORNIA

20 NETFLIX, INC., a Delaware corporation,

21 Plaintiff,

22 v.

23 BLOCKBUSTER, INC., a Delaware  
 24 corporation,

25 Defendant.

Case No. C 06 2361 WHA (JCS)

**DECLARATION OF WILLIAM J.  
 O'BRIEN IN SUPPORT OF  
 BLOCKBUSTER'S MOTION FOR  
 SUMMARY JUDGMENT OF  
 INVALIDITY AND NON-  
 INFRINGEMENT**

26 AND RELATED COUNTERCLAIMS

Hearing Date: August 2, 2007  
 Time: 8:00 A.M.  
 Courtroom: 9, 19th Floor

Complaint Filed: April 4, 2006  
 Trial Date: September 17, 2007

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**PUBLICLY REDACTED VERSION**

1 I, William J. O'Brien, declare:

2 1. I am an attorney duly admitted to practice before this Court and the courts of the  
3 State of California, and am a partner in Bingham McCutchen, LLP, Counsel for Defendant and  
4 Counterclaimant Blockbuster. This declaration is submitted in support of Blockbuster's Motion  
5 for Summary Judgment of Invalidity and Non-Infringement. If called as a witness I would and  
6 could testify to the following:

7 2. Attached as Exhibit A is a true and correct copy of U.S. Patent No. 6,584,450,  
8 issued by the U.S. Patent and Trademark Office on June 24, 2003.

9 3. Attached as Exhibit B is a true and correct copy of excerpts from U.S. Patent No.  
10 7,024,381, issued by the U.S. Patent and Trademark Office on April 4, 2006.

11 4. Attached as Exhibit C is a true and correct copy of excerpts from the May 4,  
12 2007, Expert Report of Jason Salzetti of Deloitte Consulting LLP.

13 5. Attached as Exhibit D is a true and correct copy of excerpts from Volumes I and  
14 II of the deposition transcript of Reed Hastings, taken on April 2-3, 2007. I was present at Mr.  
15 Hastings's deposition, and the excerpts accurately represent the proceedings.

16 6. Attached as Exhibit E is a true and correct copy of excerpts from Volumes I and II  
17 of the deposition transcript of Neil Hunt, taken on March 23, 2007 and April 27, 2007. I was  
18 present at Mr. Hunt's deposition, and the excerpts accurately represent the proceedings.

19 **[PORTIONS OF THIS EXHIBIT HAVE BEEN FILED UNDER SEAL]**

20 7. Attached as Exhibit F is a true and correct copy of documents produced by Netflix  
21 in this litigation with Serial Numbers NFLIX0210910-13 showing the netflix.com web page as  
22 of Sunday, January 17, 1999.

23 8. Attached as Exhibit G is a true and correct copy of a Home Film Festival web  
24 page as of November 6, 1996, that was produced by Blockbuster in this litigation with Serial  
25 Numbers BB01318581-86.

26 9. Attached as Exhibit H is a true and correct copy of a web page produced by  
27 Blockbuster in this litigation with Serial Numbers BB01318683-89, entitled "The Enneagram

1 Movie & Video Store.”

2 10. Attached as Exhibit I is a true and correct copy of documents produced by Netflix  
3 in this litigation with Serial Numbers NFLIX0001905-07, entitled “*Circulating Libraries and*  
4 *Video Rental Stores*,” by Richard Roehl & Hal R. Varian, University of California, Berkeley, and  
5 University of Michigan, Dearbon, December 1996.

6 11. Attached as Exhibit J is a true and correct copy of excerpts from the deposition  
7 transcript of Linda Verin, taken on April 5, 2007. As set forth in the Declaration of Tony Chen  
8 filed concurrently, Mr. Chen was present at Ms. Verin’s deposition, and the excerpts accurately  
9 represent the proceedings.

10 12. Attached as Exhibit K is a true and correct copy of excerpts from the deposition  
11 transcript of Tom Adams, taken on June 1, 2007. I was present at Mr. Adams’ deposition, and  
12 the excerpts accurately represent the proceedings. [**THIS EXHIBIT HAS BEEN FILED**  
13 **UNDER SEAL**]

14 13. Attached as Exhibit L is a true and correct copy of a newspaper advertisement  
15 from The West Side Spirit regarding Cine Club video, dated December 23, 1985, and produced  
16 by Blockbuster in this litigation with Serial Number BB00013030. *See* Federal Rule of Evidence  
17 902(6).

18 14. Attached as Exhibit M is a true and correct copy of a set of newspaper articles  
19 from Changing Times dated October 1985, produced by Blockbuster in this litigation with Serial  
20 Number BB00004581. *See* Federal Rule of Evidence 902(6).

21 15. Attached as Exhibit N is a true and correct copy of a “Regional Reports - Central  
22 Region” from *Video Store* magazine, dated January 1985 and produced by Blockbuster in this  
23 litigation with Serial Number BB00012976. *See* Federal Rule of Evidence 902(6).

24 16. Attached as Exhibit O is a true and correct copy of an advertisement for PopCard  
25 from *The Oklahoman* newspaper, dated April 2, 1982, and produced by Blockbuster in this  
26 litigation with Serial Number BB00013052. *See* Federal Rule of Evidence 902(6).

27 17. Attached as Exhibit P is a true and correct copy of excerpts from the deposition  
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1 transcript of Mark Ramm, taken on March 23, 2007. As set forth in the Declaration of Tony  
2 Chen filed concurrently, Mr. Chen was present at Mr. Ramm's deposition and the excerpts  
3 accurately represent the proceedings.

4 18. Attached as Exhibit Q is a true and correct copy of excerpts from a document  
5 produced by Blockbuster in this litigation beginning with Serial Number BB00008174 entitled  
6 *Automated Circulation Systems in Libraries Serving the Blind and Physically Handicapped: A*  
7 *Reference Guide for Planning*, prepared by Cuadra Associates, Inc. under contract to the  
8 National Library Service for the Blind and Physically Handicapped, Library of Congress, dated  
9 May 15, 1981.

10 19. Attached as Exhibit R is a true and correct copy of excerpts from a European  
11 Patent Application, naming Yoshida as inventor, published as Publication Number 0 286 130 A2,  
12 on August 4, 1988, produced by Blockbuster in this litigation beginning with Serial Number  
13 BB00579584.

14 20. Attached as Exhibit S is a true and correct copy of excerpts from the deposition  
15 transcript of Shane Evangelist taken on April 17, 2007. I was present at Mr. Evangelist's  
16 deposition and the excerpts accurately represent the proceedings. **[THIS EXHIBIT HAS**  
17 **BEEN FILED UNDER SEAL]**

18 21. Attached as Exhibit T is a true and correct copy of excerpts from the deposition  
19 transcript of Haim Mendelson taken on June 5, 2007. I was present at Mr. Mendelson's  
20 deposition and the excerpts accurately represent the proceedings.

21 22. Attached as Exhibit U is a true and correct copy of documents regarding Tape  
22 Rental Library, Inc. that were marked as Exhibit 41 at the deposition of Mr. Ramm on March 23,  
23 2007.

24 23. Attached as Exhibit V is a true and correct copy of excerpts from the Random  
25 House Dictionary of the English Language, 2nd Edition, Unabridged.

26 24. Attached as Exhibit W is a true and correct copy of documents regarding Tape  
27 Rental Library, Inc. that were marked as Exhibit 25 at the deposition of Mr. Ramm on March 23,  
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1 2007.

2 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
3 14th day of June, 2007 in Santa Monica, California.

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/s/  
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William J. O'Brien

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