Blockbuster, having somehow learned of a pending Netflix patent application, would belatedly attempt to patent the same subject matter itself. Even in the absence of any protective order at all, any such attempt would be futile, as Netflix would demonstrably be the prior inventor, and since, under such circumstances, Blockbuster would not qualify as an inventor at all. *See e.g.*, 35 U.S.C. § 102. Similarly, it is not realistic to suppose that, having learned of some consumer preference reflected in consumer research materials produced by Netflix, Blockbuster could or would attempt to patent the use of those results. In addition to being excessive and highly prejudicial, the special source-code restrictions proposed by Netflix are simply unnecessary.

DATED: October 3, 2006

KEKER & VAN NEST, LLP

Ashok Ramani by William O'Brien with express consent

By _____
Ashok Ramani
Attorneys for Plaintiff and Counterdefendant, Netflix, Inc.

DATED: October 3, 2006

ALSCHULER GROSSMAN STEIN & KAHAN LLP

By _____
William J. O'Brien
Attorneys for Defendant and Counterclaimant, Blockbuster Inc.