

EXHIBIT A

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Attorneys for Defendant and Counterclaimant,
Blockbuster Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NETFLIX, INC., a Delaware corporation,
Plaintiff,
vs.
BLOCKBUSTER INC., a Delaware
corporation, DOES 1-50,
Defendants.

AND RELATED COUNTER ACTION.

CASE NO. C 06 2361 WHA
[Assigned for Discovery Purposes
to the Honorable Joseph C. Spero,
United States Magistrate Judge]

**[BLOCKBUSTER'S
PROPOSED] PROTECTIVE
ORDER**

Complaint Filed: April 4, 2006

The Court having received the parties' Joint Stipulation Re Protective
Order, and good cause appearing therefore, IT IS HEREBY ORDERED AS
FOLLOWS:

1. This Protective Order shall remain in full force and effect unless
modified by an order of the Court or by a written stipulation of the parties filed with
the Court. Without limiting the generality of the foregoing, this Protective Order
shall survive and remain in full force and effect after the termination of this
litigation, subject to further order of the Court.

1 2. Nothing in this Protective Order shall limit or preclude any party
2 from applying to the Court for relief from this Protective Order, or for such further
3 and additional protective orders as the Court may deem appropriate. Further,
4 nothing in this Protective Order shall preclude or limit a party's use of its own
5 documents, or preclude or limit a party's use of documents obtained independently.

6 3. Any party to this litigation or any third party who submits to the
7 jurisdiction of this Court for the purpose of interpretation and enforcement of this
8 Protective Order ("Producing Third Party"), who, in discovery or otherwise,
9 produces or discloses any item, including without limitation any document, thing,
10 interrogatory answer, deposition testimony, information or admission
11 ("Material")(collectively, "Designating Party"), may designate the same as:

12 a. "CONFIDENTIAL" where such Material contains
13 competitively sensitive information or other confidential information the present
14 disclosure of which would, in the good-faith judgment of the Designating Party, be
15 unfairly detrimental to the Designating Party in the conduct of its business; or

16 b. "CONFIDENTIAL – ATTORNEYS' EYES ONLY" ("AEO")
17 where such Material meets the requirements of items designated as
18 "CONFIDENTIAL" and, in addition, the disclosure of the Material or information
19 contained in it to the other party poses an unfair and unreasonable risk of material
20 harm to the Designating Party (or in the case of a Producing Third Party
21 Designating Party, if disclosure of the Material or information contained in it to
22 either or both parties poses an unfair and unreasonable risk of material harm to the
23 Designating Party).

24 4. CONFIDENTIAL and AEO Materials (collectively,
25 "Confidential Material") shall be designated and marked in the following manners:

26 a. Documents: The Designating Party may designate documents
27 as CONFIDENTIAL OR AEO by producing or serving copies of the document
28 marked with a legend reading "CONFIDENTIAL" or "CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY." Such legend need only be placed on the first page
2 of each document so designated.

3 b. Magnetic Media: Where material is produced in a magnetic
4 medium (such as floppy diskette or tape), the diskette, tape, or other medium
5 container shall be marked as set forth above.

6 c. Physical Exhibits: Physical exhibits shall be marked by placing
7 a label on the exhibit marked as set forth above

8 d. Deposition Testimony: Testimony taken at a deposition may be
9 designated as CONFIDENTIAL or AEO by counsel for any party (or any witness
10 or counsel for such a witness) who makes a statement to that effect on the record at
11 the deposition, or, alternatively, by notifying all parties to the action in writing that
12 specific testimony, identified by page and line numbers, is CONFIDENTIAL OR
13 AEO, within ten (10) working days of counsel's receipt of the deposition transcript.
14 Deposition testimony and transcripts shall be treated as CONFIDENTIAL or AEO
15 effective upon their designation as such on the record as provided above or on
16 receipt of written notice as provided above, whichever is earlier.

17 5. Any Materials produced in discovery by a person or entity not a
18 party to this action may be designated as CONFIDENTIAL OR AEO by a party to
19 this action, or by the producing third-party, by marking it in accordance with
20 Paragraph 4 the time of production.

21 6. Confidential Material may be used only for the purposes of this
22 litigation, and for no other purpose, and be disclosed or made available only to the
23 Court, to counsel for a party (including the paralegal, clerical, and secretarial staff
24 employed by such counsel), and to the following persons ("Qualified Persons"):

25 a. Parties and officers, directors, partners or employees of a
26 parties, and affiliates of a party deemed necessary by counsel to aid in the
27 prosecution, defense, or settlement of this action;

28 b. Experts and consultants (together with their clerical staff)

- 1 retained by counsel to assist in the prosecution, defense, or settlement of this action;
- 2 c. Court reporters employed in this action;
- 3 d. Witnesses at any deposition or other proceeding in this action;
- 4 e. As to any specific item of Confidential Material, the author of
- 5 that item and anyone identified in the item as having received it in the ordinary
- 6 course of business; and
- 7 f. Any other person as to whom all of the parties agree in writing.

8 However, prior to disclosing any Confidential Material to any
 9 “Qualified Person” described in sub-paragraphs (b) and (d) (but not including sub-
 10 paragraph (e)), the party wishing to so disclose Confidential Material shall provide
 11 such Qualified Person with a copy of this Order, and such Qualified Person shall
 12 complete and sign an Undertaking Pursuant to Protective Order in the form of
 13 Attachment “A” and the party wishing to so disclose Confidential Material shall
 14 provide a copy of the completed and signed Undertaking to counsel for the
 15 Designating Party as well as counsel for each party in this action. The original
 16 Undertaking shall be maintained by counsel for the disclosing party.

17 7. Materials or information designated by any party as
 18 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall be restricted to the
 19 following persons on behalf of the receiving party:

- 20 a. Alschuler Grossman Stein & Kahan, LLP and Kecker & Van
- 21 Nest, LLP, their employees, and any independent photocopying, duplication, or
- 22 litigation support service hired for the purpose of aid in this litigation;
- 23 b. One in-house counsel employed by each of the parties, such
- 24 counsel to be Bryan P. Stevenson in the case of Blockbuster Inc. and an in-house
- 25 attorney to be promptly designated in writing by Netflix, Inc., but only after each
- 26 such in-house counsel, paralegal, or secretary executes an Undertaking in the form
- 27 of Attachment “A,” a copy of which shall be provided forthwith to counsel for each
- 28 party.

1 c. Court personnel and stenographic reporters, engaged in such
2 proceedings as are necessarily incident to the preparation for trial (e.g., depositions)
3 and/or trial of this action;

4 d. Outside experts who are reasonably necessary to assist counsel
5 for any party in the preparation for trial and/or trial of this action as well as the
6 experts' employees and staff;

7 e. As to any specific item of AEO Material, the author of that item
8 and anyone identified in the item as having received it in the ordinary course of
9 business; and

10 f. Any other person as to whom all of the parties in writing agree.

11 However, prior to sharing any AEO Material with any "Qualified
12 Person" described in sub-paragraph (d), the party wishing to disclose AEO Material
13 to such person must provide ten (10) working days' written notice to the attorneys
14 for the other side and for the Designating Party of the intent to disclose AEO
15 Material to such person. Such notice shall include a copy of such person's
16 *curriculum vitae* and shall include information sufficient to determine such person's
17 qualifications, current and prior business affiliations, and any current or prior work
18 performed for actual or potential competitors of the Designating Party whose AEO
19 Material is sought to be disclosed so as to permit that party to determine whether
20 grounds exist for objecting to such disclosure. If no objection is received within ten
21 (10) working days, the party wishing to disclose AEO Material may do so, provided
22 that the person to whom the disclosure is made is provided with a copy of this
23 Order and completes and signs an Undertaking in the form of Attachment "A" and
24 a copy of the completed and signed Undertaking is provided to counsel for the
25 Designating Party as well as counsel for each party in this action. The original
26 Undertaking shall be maintained by counsel for the disclosing party.

27 If an objection is received within ten (10) days, then no disclosure may
28 be made until the objection is resolved by Order of the Court or written agreement

1 of the Designating Party.

2 8. Any objections to the designation of any items of information as
3 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY" shall be made
4 in writing to counsel for the Designating Party. Such objections may include a
5 request that the Designating Party approve redacted copies of specifically identified
6 documents with information designated as "CONFIDENTIAL - ATTORNEYS
7 ONLY" and/or "CONFIDENTIAL" redacted, and the redacted copies redesignated
8 with the appropriate confidential status. If such objections cannot be resolved by
9 agreement, either party may move the Court upon notice to determine the propriety
10 of the designation. The information which is the subject of such a motion shall be
11 treated in accordance with its specific designated confidential status pending
12 resolution of the motion, including appeals and writs. As to Confidential Material
13 produced and so designated by June 1, 2007, such motions may be filed at any time
14 up to and including August 20, 2007. As to Confidential Material produced or
15 designated after June 1, 2007, such motions may be filed at any reasonable time.

16 9. Any documents or other information designated as
17 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY" which are
18 filed with the Court for any purpose shall be filed in a sealed envelope and marked
19 with the title of the action and a statement substantially in either of the following
20 forms, as appropriate:

21 "CONFIDENTIAL. THIS ENVELOPE CONTAINING PAPERS
22 FILED BY (NAME OF PARTY) IN THIS CASE PURSUANT TO A
23 PROTECTIVE ORDER OF THE COURT IS NOT TO BE OPENED NOR THE
24 CONTENTS THEREOF DISPLAYED OR REVEALED EXCEPT BY COURT
25 ORDER OR BY AGREEMENT OF THE PARTIES."

26 or

27 "CONFIDENTIAL - ATTORNEYS ONLY. THIS ENVELOPE
28 CONTAINING PAPERS FILED BY (NAME OF PARTY) IN THIS CASE

1 PURSUANT TO A PROTECTIVE ORDER OF THE COURT IS NOT TO BE
2 OPENED NOR THE CONTENTS THEREOF DISPLAYED OR REVEALED
3 EXCEPT BY COURT ORDER OR BY AGREEMENT OF THE PARTIES.”

4 To the extent practicable, CONFIDENTIAL and AEO Material shall
5 be filed separately or in several portions of filed papers, so that the non-confidential
6 portions may be disseminated freely. No Confidential Material shall be included in
7 whole or in part in pleadings, motions, briefs, or other papers filed in the Court
8 except as provided for in this paragraph.

9 10. Failure to designate Confidential Materials in accordance with
10 this Protective Order or the failure to object to a designation at or within the given
11 time shall not preclude the filing of a motion at a later date seeking to impose such
12 designation or challenging the propriety thereof. This Protective Order shall not be
13 construed as a waiver of any right to object to the furnishing of information in
14 response to discovery.

15 11. In the event that any material designated “CONFIDENTIAL” or
16 “CONFIDENTIAL - ATTORNEYS ONLY” is used in any court proceedings in
17 connection with this litigation, it shall not lose its “CONFIDENTIAL” or
18 “CONFIDENTIAL - ATTORNEYS ONLY” status through such use, and the
19 parties shall take all steps reasonably required to protect its confidentiality during
20 such use.

21 12. The parties agree that acceptance of any documents or other
22 materials designated as “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS
23 ONLY” pursuant to this Order shall not constitute an admission or
24 acknowledgement by the receiving party that documents or materials so designated
25 are in fact proprietary, confidential, trade secret, and shall not constitute an
26 admission by any party that such documents or information would be admissible
27 evidence at trial.

28 13. Promptly, and no later than thirty (30) days after final

1 termination of this action by judgment, settlement, or otherwise, all Confidential
 2 Material furnished or produced under the terms of this Protective Order, including
 3 all copies thereof and all documents incorporating such information, except all
 4 pleadings filed with the Court, exhibits marked in discovery or at trial and materials
 5 which in the judgment of the attorney in possession of the materials are work
 6 product materials, shall be delivered to the counsel for the Designating Party or
 7 shall be destroyed and written certification of such destruction provided to counsel
 8 for the Designating Party, unless the Designating Party agrees otherwise in writing.
 9 The above-described pleadings, exhibits, and work product materials, may be
 10 retained in confidence under the terms of this Protective Order by outside counsel
 11 for each party.

12 14. Upon approval by the Court, this Protective Order shall govern
 13 further discovery in this case.

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DATED: _____

 Honorable Joseph C. Spero
 United States Magistrate Judge

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ATTACHMENT "A"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NETFLIX, INC.,
Plaintiff,
vs.
BLOCKBUSTER INC.,
Defendant.

CASE NO. C 06-2361 WHA
[Assigned for Discovery Purposes to the
Honorable Joseph C. Spero, United
States Magistrate Judge]

**UNDERTAKING PURSUANT TO
PROTECTIVE ORDER**

And related counterclaims.

The undersigned acknowledges receipt and review of this Protective Order previously entered into in this matter, understands the terms and conditions thereof, is among those "qualified" persons specified therein as entitled to review "CONFIDENTIAL" [and "CONFIDENTIAL ATTORNEYS' EYES ONLY"] Material as defined therein, and agrees to be bound by the terms of such Order. Upon the termination of this lawsuit, the undersigned also agrees to return or dispose of all such Confidential Material, including all copies or notes thereof, as provided in the Order.

DATED: _____

Type or Print Name: _____

Address: _____

Telephone Number: (____) ____-_____