

EXHIBIT E 2

1 **REQUEST FOR PRODUCTION NO. 69:**

2 All MATERIALS constituting, recording, referring to, or evidencing any use practice,
3 description, or disclosure, prior to April 28, 1999, of shipping a movie only if a fee was current.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 69:**

5 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
6 Request could be read to purport to require Netflix to conduct a search for and produce materials
7 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
8 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
9 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
10 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
11 construction well prior to the date provided for in the Court's Case Management Order and the
12 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
13 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
14 documents literally called for by the Request, without any further context, Netflix objects to the
15 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
16 discovery of admissible evidence. This Request is nothing more than an attempt to harass
17 Netflix by requiring it to mount a search for and produce documents that could fall within the
18 literal terms of snippets of the claims of its patents.

19 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
20 narrowed Request that could possibly yield materials relevant to this case without imposing the
21 burdens associated with a search for documents responsive to the Request in its current form,
22 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
23 corresponding search for documents responsive to, the Request as currently phrased.

24 **REQUEST FOR PRODUCTION NO. 70:**

25 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
26 prior to April 28, 1999, of any computer system for renting movies.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 70:**

28 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this

1 Request could be read to purport to require Netflix to conduct a search for and produce materials
2 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
3 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
4 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
5 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
6 construction well prior to the date provided for in the Court's Case Management Order and the
7 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
8 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
9 documents literally called for by the Request, without any further context, Netflix objects to the
10 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
11 discovery of admissible evidence. This Request is nothing more than an attempt to harass
12 Netflix by requiring it to mount a search for and produce documents that could fall within the
13 literal terms of snippets of the claims of its patents.

14 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
15 narrowed Request that could possibly yield materials relevant to this case without imposing the
16 burdens associated with a search for documents responsive to the Request in its current form,
17 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
18 corresponding search for documents responsive to, the Request as currently phrased.

19 **REQUEST FOR PRODUCTION NO. 71:**

20 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
21 prior to April 28, 1999, of renting movies using a computer coupled to a digital
22 telecommunications network.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 71:**

24 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
25 Request could be read to purport to require Netflix to conduct a search for and produce materials
26 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
27 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
28 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as

1 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
2 construction well prior to the date provided for in the Court's Case Management Order and the
3 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
4 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
5 documents literally called for by the Request, without any further context, Netflix objects to the
6 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
7 discovery of admissible evidence. This Request is nothing more than an attempt to harass
8 Netflix by requiring it to mount a search for and produce documents that could fall within the
9 literal terms of snippets of the claims of its patents.

10 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
11 narrowed Request that could possibly yield materials relevant to this case without imposing the
12 burdens associated with a search for documents responsive to the Request in its current form,
13 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
14 corresponding search for documents responsive to, the Request as currently phrased.

15 **REQUEST FOR PRODUCTION NO. 72:**

16 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
17 prior to April 28, 1999, of renting movies using a computer coupled to a digital
18 telecommunications network.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 72:**

20 Refer to Netflix's response to Request for Production No. 71.

21 **REQUEST FOR PRODUCTION NO. 73:**

22 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
23 prior to April 28, 1999, of renting movies using a computer with electronic digital memory.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 73:**

25 Refer to Netflix's response to Request for Production No. 70

26 **REQUEST FOR PRODUCTION NO. 74:**

27 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
28 prior to April 28, 1999, of renting movies using a computer with programs stored in memory

1 causing the computer to perform steps.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 74:**

3 Refer to Netflix's response to Request for Production No. 70.

4 **REQUEST FOR PRODUCTION NO. 75:**

5 All MATERIALS constituting, recording, referring to, or evidencing any use practice,
6 description, or disclosure, prior to April 28, 1999, of updating a movie rental queue by changing
7 the order of two or more movies for rental to a customer.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 75:**

9 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
10 Request could be read to purport to require Netflix to conduct a search for and produce materials
11 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
12 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
13 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
14 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
15 construction well prior to the date provided for in the Court's Case Management Order and the
16 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

17 Subject to and without waiving its objections, Netflix will produce all non-privileged,
18 responsive documents that can be located upon a reasonably diligent search.

19 **REQUEST FOR PRODUCTION NO. 76:**

20 All MATERIALS constituting, recording, referring to, or evidencing any use practice,
21 description, or disclosure, prior to April 28, 1999, of updating a movie rental queue by indicating
22 an additional movie in an ordered list.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 76:**

24 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
25 Request could be read to purport to require Netflix to conduct a search for and produce materials
26 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
27 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
28 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as

1 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
2 construction well prior to the date provided for in the Court's Case Management Order and the
3 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

4 Subject to and without waiving its objections, Netflix will produce all non-privileged,
5 responsive documents that can be located upon a reasonably diligent search.

6 **REQUEST FOR PRODUCTION NO. 77:**

7 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
8 description, or disclosure, prior to April 28, 1999, of updating a movie rental queue by removing
9 an indication of one or more movies from the ordered list.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 77:**

11 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
12 Request could be read to purport to require Netflix to conduct a search for and produce materials
13 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
14 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
15 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
16 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
17 construction well prior to the date provided for in the Court's Case Management Order and the
18 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

19 Subject to and without waiving its objections, Netflix will produce all non-privileged,
20 responsive documents that can be located upon a reasonably diligent search.

21 **REQUEST FOR PRODUCTION NO. 78:**

22 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
23 prior to April 28, 1999, of any computer-implemented method in which two or more movies for
24 renting to a customer are selected by a customer.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 78:**

26 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
27 Request could be read to purport to require Netflix to conduct a search for and produce materials
28 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent

1 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
2 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
3 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
4 construction well prior to the date provided for in the Court's Case Management Order and the
5 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
6 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
7 documents literally called for by the Request, without any further context, Netflix objects to the
8 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
9 discovery of admissible evidence. This Request is nothing more than an attempt to harass
10 Netflix by requiring it to mount a search for and produce documents that could fall within the
11 literal terms of snippets of the claims of its patents.

12 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
13 narrowed Request that could possibly yield materials relevant to this case without imposing the
14 burdens associated with a search for documents responsive to the Request in its current form,
15 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
16 corresponding search for documents responsive to, the Request as currently phrased.

17 **REQUEST FOR PRODUCTION NO. 79:**

18 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
19 description, or disclosure, prior to April 28, 1999, of determining the order of two or more
20 movies based upon one or more preferences of a customer.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 79:**

22 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
23 Request could be read to purport to require Netflix to conduct a search for and produce materials
24 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
25 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
26 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
27 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
28 construction well prior to the date provided for in the Court's Case Management Order and the

1 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
2 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
3 documents literally called for by the Request, without any further context, Netflix objects to the
4 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
5 discovery of admissible evidence. This Request is nothing more than an attempt to harass
6 Netflix by requiring it to mount a search for and produce documents that could fall within the
7 literal terms of snippets of the claims of its patents.

8 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
9 narrowed Request that could possibly yield materials relevant to this case without imposing the
10 burdens associated with a search for documents responsive to the Request in its current form,
11 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
12 corresponding search for documents responsive to, the Request as currently phrased.

13 **REQUEST FOR PRODUCTION NO. 80:**

14 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
15 prior to April 28, 1999, of any delivery of a selected movie by mail.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 80:**

17 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
18 Request could be read to purport to require Netflix to conduct a search for and produce materials
19 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
20 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
21 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
22 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
23 construction well prior to the date provided for in the Court's Case Management Order and the
24 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
25 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
26 documents literally called for by the Request, without any further context, Netflix objects to the
27 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
28 discovery of admissible evidence. This Request is nothing more than an attempt to harass

1 Netflix by requiring it to mount a search for and produce documents that could fall within the
2 literal terms of snippets of the claims of its patents.

3 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
4 narrowed Request that could possibly yield materials relevant to this case without imposing the
5 burdens associated with a search for documents responsive to the Request in its current form,
6 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
7 corresponding search for documents responsive to, the Request as currently phrased.

8 **REQUEST FOR PRODUCTION NO. 81:**

9 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
10 prior to April 28, 1999, of any delivery of a selected movie by mail on one or more optical
11 media.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 81:**

13 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
14 Request could be read to purport to require Netflix to conduct a search for and produce materials
15 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
16 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
17 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
18 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
19 construction well prior to the date provided for in the Court's Case Management Order and the
20 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
21 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
22 documents literally called for by the Request, without any further context, Netflix objects to the
23 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
24 discovery of admissible evidence. This Request is nothing more than an attempt to harass
25 Netflix by requiring it to mount a search for and produce documents that could fall within the
26 literal terms of snippets of the claims of its patents.

27 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
28 narrowed Request that could possibly yield materials relevant to this case without imposing the

1 burdens associated with a search for documents responsive to the Request in its current form,
2 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
3 corresponding search for documents responsive to, the Request as currently phrased.

4 **REQUEST FOR PRODUCTION NO. 82:**

5 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
6 description, or disclosure, prior to April 28, 1999, of, in response to receipt of a movie by mail,
7 selecting another movie and causing it to be delivered to a customer.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 82:**

9 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
10 Request could be read to purport to require Netflix to conduct a search for and produce materials
11 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
12 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
13 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
14 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
15 construction well prior to the date provided for in the Court's Case Management Order and the
16 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

17 Subject to and without waiving its objections, Netflix will produce all non-privileged,
18 responsive documents that can be located upon a reasonably diligent search.

19 **REQUEST FOR PRODUCTION NO. 83:**

20 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
21 description, or disclosure, prior to April 28, 1999, of any computer-implemented rental of
22 movies in which the number of movies delivered to the customer and not yet returned did not
23 exceed a specified number.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 83:**

25 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
26 Request could be read to purport to require Netflix to conduct a search for and produce materials
27 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
28 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not

1 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
2 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
3 construction well prior to the date provided for in the Court's Case Management Order and the
4 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

5 Subject to and without waiving its objections, Netflix will produce all non-privileged,
6 responsive documents that can be located upon a reasonably diligent search.

7 **REQUEST FOR PRODUCTION NO. 84:**

8 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
9 description, or disclosure, prior to April 28, 1999, of electronically updating a movie rental
10 queue response to electronic digital information indicating that delivery criteria were satisfied.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 84:**

12 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
13 Request could be read to purport to require Netflix to conduct a search for and produce materials
14 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
15 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
16 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
17 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
18 construction well prior to the date provided for in the Court's Case Management Order and the
19 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

20 Subject to and without waiving its objections, Netflix will produce all non-privileged,
21 responsive documents that can be located upon a reasonably diligent search.

22 **REQUEST FOR PRODUCTION NO. 85:**

23 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
24 description, or disclosure, prior to April 28, 1999, of electronically updating a movie rental
25 queue in response to electronic digital information comprising selection criteria.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 85:**

27 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
28 Request could be read to purport to require Netflix to conduct a search for and produce materials

1 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
2 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
3 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
4 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
5 construction well prior to the date provided for in the Court's Case Management Order and the
6 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

7 Subject to and without waiving its objections, Netflix will produce all non-privileged,
8 responsive documents that can be located upon a reasonably diligent search.

9 **REQUEST FOR PRODUCTION NO. 86:**

10 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
11 prior to April 28, 1999, of rental of any of motion pictures, television series, documentaries,
12 cartoons, music videos, video recordings of concert performances, instructional programs, or
13 educational programs.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 86:**

15 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
16 Request could be read to purport to require Netflix to conduct a search for and produce materials
17 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
18 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
19 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
20 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
21 construction well prior to the date provided for in the Court's Case Management Order and the
22 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
23 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
24 documents literally called for by the Request, without any further context, Netflix objects to the
25 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
26 discovery of admissible evidence. This Request is nothing more than an attempt to harass
27 Netflix by requiring it to mount a search for and produce documents that could fall within the
28 literal terms of snippets of the claims of its patents.

1 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
2 narrowed Request that could possibly yield materials relevant to this case without imposing the
3 burdens associated with a search for documents responsive to the Request in its current form,
4 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
5 corresponding search for documents responsive to, the Request as currently phrased.

6 **REQUEST FOR PRODUCTION NO. 87:**

7 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
8 prior to April 28, 1999, of receiving one or more item selection criteria that indicated one or
9 more items a customer desired to rent.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 87:**

11 Refer to Netflix's response to Request for Production No. 79.

12 **REQUEST FOR PRODUCTION NO. 88:**

13 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
14 prior to April 28, 1999, of providing a customer up to a specified number of items indicated by
15 one or more selection criteria.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 88:**

17 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
18 Request could be read to purport to require Netflix to conduct a search for and produce materials
19 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
20 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
21 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
22 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
23 construction well prior to the date provided for in the Court's Case Management Order and the
24 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
25 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
26 documents literally called for by the Request, without any further context, Netflix objects to the
27 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
28 discovery of admissible evidence. This Request is nothing more than an attempt to harass

1 Netflix by requiring it to mount a search for and produce documents that could fall within the
2 literal terms of snippets of the claims of its patents.

3 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
4 narrowed Request that could possibly yield materials relevant to this case without imposing the
5 burdens associated with a search for documents responsive to the Request in its current form,
6 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
7 corresponding search for documents responsive to, the Request as currently phrased.

8 **REQUEST FOR PRODUCTION NO. 89:**

9 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
10 prior to April 28, 1999, of, in response to receiving one or more items provided to a customer,
11 providing the customer one or more other items indicated by one or more item selection criteria.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 89:**

13 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
14 Request could be read to purport to require Netflix to conduct a search for and produce materials
15 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
16 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
17 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
18 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
19 construction well prior to the date provided for in the Court's Case Management Order and the
20 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
21 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
22 documents literally called for by the Request, without any further context, Netflix objects to the
23 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
24 discovery of admissible evidence. This Request is nothing more than an attempt to harass
25 Netflix by requiring it to mount a search for and produce documents that could fall within the
26 literal terms of snippets of the claims of its patents.

27 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
28 narrowed Request that could possibly yield materials relevant to this case without imposing the

1 burdens associated with a search for documents responsive to the Request in its current form,
2 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
3 corresponding search for documents responsive to, the Request as currently phrased.

4 **REQUEST FOR PRODUCTION NO. 90:**

5 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
6 description, or disclosure, prior to April 28, 1999, of any rental of items to a customer in which
7 the total current number of items provided to the customer did not exceed a specified number.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 90:**

9 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
10 Request could be read to purport to require Netflix to conduct a search for and produce materials
11 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
12 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
13 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
14 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
15 construction well prior to the date provided for in the Court's Case Management Order and the
16 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
17 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
18 documents literally called for by the Request, without any further context, Netflix objects to the
19 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
20 discovery of admissible evidence. This Request is nothing more than an attempt to harass
21 Netflix by requiring it to mount a search for and produce documents that could fall within the
22 literal terms of snippets of the claims of its patents.

23 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
24 narrowed Request that could possibly yield materials relevant to this case without imposing the
25 burdens associated with a search for documents responsive to the Request in its current form,
26 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
27 corresponding search for documents responsive to, the Request as currently phrased.

28

1 **REQUEST FOR PRODUCTION NO. 91:**

2 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
3 description, or disclosure, prior to April 28, 1999, of any rental of items to a customer in which
4 the total current number of items provided to the customer did not exceed a specified limit.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 91:**

6 Refer to Netflix's response to Request for Production No. 90.

7 **REQUEST FOR PRODUCTION NO. 92:**

8 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
9 prior to April 28, 1999, of renting movies.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 92:**

11 Refer to Netflix's response to Request for Production No. 86.

12 **REQUEST FOR PRODUCTION NO. 93:**

13 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
14 prior to April 28, 1999, of a computer-readable medium for renting items to customers.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 93:**

16 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
17 Request could be read to purport to require Netflix to conduct a search for and produce materials
18 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
19 that Blockbuster seeks thereby to require Netflix to construe a claim element, this Request is
20 irrelevant, as Netflix has not asserted a claim containing the above language. Alternatively, to the
21 extent that Blockbuster seeks to have Netflix search for and produce all documents literally
22 called for by the Request, without any further context, Netflix objects to the Request as overly
23 broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible
24 evidence. This Request is nothing more than an attempt to harass Netflix by requiring it to
25 mount a search for and produce documents that could fall within the literal terms of snippets of
26 the claims of its patents.

27 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
28 narrowed Request that could possibly yield materials relevant to this case without imposing the

1 burdens associated with a search for documents responsive to the Request in its current form,
2 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
3 corresponding search for documents responsive to, the Request as currently phrased.

4 **REQUEST FOR PRODUCTION NO. 94:**

5 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
6 prior to April 28, 1999, of a computer-readable medium for renting items to customers that
7 carried one or more sequences of instructions.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 94:**

9 Refer to Netflix's response to Request for Production No. 93.

10 **REQUEST FOR PRODUCTION NO. 95:**

11 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
12 prior to April 28, 1999, of instructions that, when executed by one or more processors, caused
13 one or more of them to perform steps for renting items to customers.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 95:**

15 Refer to Netflix's response to Request for Production No. 93.

16 **REQUEST FOR PRODUCTION NO. 96:**

17 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
18 prior to April 28, 1999, of an apparatus for renting items to customers, the apparatus including
19 one or more processors.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 96:**

21 Refer to Netflix's response to Request for Production No. 93.

22 **REQUEST FOR PRODUCTION NO. 97:**

23 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
24 prior to April 28, 1999, of an apparatus for renting items to customers, the apparatus including a
25 memory communicatively coupled to the one or more processors, the memory including one or
26 more sequences of one or more instructions which, when executed by the one or more
27 processors, caused the one or more processors to perform steps.

28

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 97:**

2 Refer to Netflix's response to Request for Production No. 93.

3 **REQUEST FOR PRODUCTION NO. 98:**

4 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
5 prior to April 28, 1999, of an apparatus for renting items to customers comprising an item rental
6 mechanism configured to perform steps.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 98:**

8 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
9 Request could be read to purport to require Netflix to conduct a search for and produce materials
10 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
11 that Blockbuster seeks thereby to require Netflix to construe a claim element, this Request is
12 irrelevant, as Netflix has not asserted a claim containing the above language. Alternatively, to the
13 extent that Blockbuster seeks to have Netflix search for and produce all documents literally
14 called for by the Request, without any further context, Netflix objects to the Request as overly
15 broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible
16 evidence. This Request is nothing more than an attempt to harass Netflix by requiring it to
17 mount a search for and produce documents that could fall within the literal terms of snippets of
18 the claims of its patents.

19 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
20 narrowed Request that could possibly yield materials relevant to this case without imposing the
21 burdens associated with a search for documents responsive to the Request in its current form,
22 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
23 corresponding search for documents responsive to, the Request as currently phrased.

24 **REQUEST FOR PRODUCTION NO. 99:**

25 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
26 description, or disclosure, prior to April 28, 1999, of any rental of items to customers in which a
27 total number of items provided to the customer within a specified period of time did not exceed a
28 specified limit.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 99:**

2 Refer to Netflix's response to Request for Production No. 90.

3 **REQUEST FOR PRODUCTION NO. 100:**

4 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
5 description, or disclosure, prior to April 28, 1999, of any rental of items to customers in which a
6 total number of items provided to the customer within a specified period of time did not exceed a
7 specified number.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 100:**

9 Refer to Netflix's response to Request for Production No. 99.

10 **REQUEST FOR PRODUCTION NO. 101:**

11 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
12 description, or disclosure, prior to April 28, 1999, of any rental of items to customers in which if
13 the total number of items provided to the customer within a specified period of time was less
14 than a specified limit, there was an increase in the specified limit for another period of time.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 101:**

16 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
17 Request could be read to purport to require Netflix to conduct a search for and produce materials
18 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
19 that Blockbuster seeks thereby to require Netflix to construe a claim element, this Request is
20 irrelevant, as Netflix has not asserted a claim containing the above language.

21 Subject to and without waiving the foregoing objection, Netflix will produce all non-
22 privileged, responsive documents so described that are locatable after a diligent search of all
23 locations at which such materials might plausibly exist.

24 **REQUEST FOR PRODUCTION NO. 102:**

25 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
26 description, or disclosure, prior to April 28, 1999, of item selection criteria that indicated a
27 desired order for items that a customer desired to rent.

28

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 102:**

2 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
3 Request could be read to purport to require Netflix to conduct a search for and produce materials
4 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
5 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
6 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
7 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
8 construction well prior to the date provided for in the Court's Case Management Order and the
9 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

10 Subject to and without waiving the foregoing objections, Netflix will produce all non-
11 privileged, responsive documents so described that are locatable after a diligent search of all
12 locations at which such materials might plausibly exist.

13 **REQUEST FOR PRODUCTION NO. 103:**

14 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
15 description, or disclosure, prior to April 28, 1999, of providing to a customer up to a specified
16 number of items indicated by item selection criteria in the desired order indicated by the item
17 selection criteria.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 103:**

19 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
20 Request could be read to purport to require Netflix to conduct a search for and produce materials
21 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
22 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
23 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
24 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
25 construction well prior to the date provided for in the Court's Case Management Order and the
26 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

27 Subject to and without waiving the foregoing objections, Netflix will produce all non-
28 privileged, responsive documents so described that are locatable after a diligent search of all

1 locations at which such materials might plausibly exist.

2 **REQUEST FOR PRODUCTION NO. 104:**

3 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
4 description, or disclosure, prior to April 28, 1999, of providing to a customer one or more items
5 indicated by item selection criteria in the desired order indicated by the item selection criteria.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 104:**

7 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
8 Request could be read to purport to require Netflix to conduct a search for and produce materials
9 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
10 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
11 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
12 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
13 construction well prior to the date provided for in the Court's Case Management Order and the
14 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

15 Subject to and without waiving the foregoing objections, Netflix will produce all non-
16 privileged, responsive documents so described that are locatable after a diligent search of all
17 locations at which such materials might plausibly exist.

18 **REQUEST FOR PRODUCTION NO. 105:**

19 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
20 description, or disclosure, prior to April 28, 1999, of item selection criteria specifying one or
21 more preferred item attributes.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 105:**

23 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
24 Request could be read to purport to require Netflix to conduct a search for and produce materials
25 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
26 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
27 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
28 premature in that it seeks to impose upon Netflix a duty to come forward with a claim

1 construction well prior to the date provided for in the Court's Case Management Order and the
2 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
3 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
4 documents literally called for by the Request, without any further context, Netflix objects to the
5 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
6 discovery of admissible evidence. This Request is nothing more than an attempt to harass
7 Netflix by requiring it to mount a search for and produce documents that could fall within the
8 literal terms of snippets of the claims of its patents.

9 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
10 narrowed Request that could possibly yield materials relevant to this case without imposing the
11 burdens associated with a search for documents responsive to the Request in its current form,
12 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
13 corresponding search for documents responsive to, the Request as currently phrased.

14 **REQUEST FOR PRODUCTION NO. 106:**

15 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
16 description, or disclosure, prior to April 28, 1999, of automatically selecting and providing a
17 customer up to a specified number of items that had one or more preferred item attributes
18 specified by item selection criteria.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 106:**

20 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
21 Request could be read to purport to require Netflix to conduct a search for and produce materials
22 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
23 that Blockbuster seeks thereby to require Netflix to construe a claim element, this Request is
24 irrelevant, as Netflix has not asserted a claim containing the above language.

25 Subject to and without waiving the foregoing objection, Netflix will produce all non-
26 privileged, responsive documents so described that are locatable after a diligent search of all
27 locations at which such materials might plausibly exist.

28

1 **REQUEST FOR PRODUCTION NO. 107:**

2 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
3 description, or disclosure, prior to April 28, 1999, of, after providing a customer with up to a
4 specified number of items, automatically selecting and providing to the customer one or more
5 other items that had one or more preferred item attributes specified by item selection criteria.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 107:**

7 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
8 Request could be read to purport to require Netflix to conduct a search for and produce materials
9 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
10 that Blockbuster seeks thereby to require Netflix to construe a claim element, this Request is
11 irrelevant, as Netflix has not asserted a claim containing the above language.

12 Subject to and without waiving the foregoing objection, Netflix will produce all non-
13 privileged, responsive documents so described that are locatable after a diligent search of all
14 locations at which such materials might plausibly exist.

15 **REQUEST FOR PRODUCTION NO. 108:**

16 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
17 description, or disclosure, prior to April 28, 1999, of any item rental queue.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 108:**

19 Refer to Netflix's response to Request for Production No. 58.

20 **REQUEST FOR PRODUCTION NO. 109:**

21 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
22 description, or disclosure, prior to April 28, 1999, of any item rental queue for a customer.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 109:**

24 Refer to Netflix's response to Request for Production No. 58.

25 **REQUEST FOR PRODUCTION NO. 110:**

26 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
27 description, or disclosure, prior to April 28, 1999, of an item rental queue that contained one or
28 more entries that specify items that a customer desired to rent.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 110:**

2 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
3 Request could be read to purport to require Netflix to conduct a search for and produce materials
4 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
5 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
6 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
7 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
8 construction well prior to the date provided for in the Court's Case Management Order and the
9 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

10 Subject to and without waiving the foregoing objections, Netflix will produce all non-
11 privileged, responsive documents so described that are locatable after a diligent search of all
12 locations at which such materials might plausibly exist.

13 **REQUEST FOR PRODUCTION NO. 111:**

14 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
15 description, or disclosure, prior to April 28, 1999, of, in response to receiving back any item
16 provided to a customer, selecting one or more other items from an item rental queue.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 111:**

18 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
19 Request could be read to purport to require Netflix to conduct a search for and produce materials
20 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
21 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
22 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
23 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
24 construction well prior to the date provided for in the Court's Case Management Order and the
25 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

26 Subject to and without waiving the foregoing objections, Netflix will produce all non-
27 privileged, responsive documents so described that are locatable after a diligent search of all
28 locations at which such materials might plausibly exist.

1 **REQUEST FOR PRODUCTION NO. 112:**

2 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
3 description, or disclosure, prior to April 28, 1999, of establishing an item rental queue based on
4 one or more item selection criteria.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 112:**

6 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
7 Request could be read to purport to require Netflix to conduct a search for and produce materials
8 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
9 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
10 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
11 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
12 construction well prior to the date provided for in the Court's Case Management Order and the
13 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.

14 Subject to and without waiving the foregoing objections, Netflix will produce all non-
15 privileged, responsive documents so described that are locatable after a diligent search of all
16 locations at which such materials might plausibly exist.

17 **REQUEST FOR PRODUCTION NO. 113:**

18 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
19 description, or disclosure, prior to April 28, 1999, of, in response to receiving a customer
20 notification, providing the customer a second set of one or more items indicated by item
21 selection criteria.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 113:**

23 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
24 Request could be read to purport to require Netflix to conduct a search for and produce materials
25 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
26 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
27 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
28 premature in that it seeks to impose upon Netflix a duty to come forward with a claim

1 construction well prior to the date provided for in the Court's Case Management Order and the
2 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
3 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
4 documents literally called for by the Request, without any further context, Netflix objects to the
5 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
6 discovery of admissible evidence. This Request is nothing more than an attempt to harass
7 Netflix by requiring it to mount a search for and produce documents that could fall within the
8 literal terms of snippets of the claims of its patents.

9 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
10 narrowed Request that could possibly yield materials relevant to this case without imposing the
11 burdens associated with a search for documents responsive to the Request in its current form,
12 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
13 corresponding search for documents responsive to, the Request as currently phrased.

14 **REQUEST FOR PRODUCTION NO. 114:**

15 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
16 description, or disclosure, prior to April 28, 1999, of, in response to expiration of a specified
17 amount of time, providing a customer a second set of one or more items indicated by item
18 selection criteria.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 114:**

20 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
21 Request could be read to purport to require Netflix to conduct a search for and produce materials
22 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
23 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
24 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
25 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
26 construction well prior to the date provided for in the Court's Case Management Order and the
27 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
28 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all

1 documents literally called for by the Request, without any further context, Netflix objects to the
2 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
3 discovery of admissible evidence. This Request is nothing more than an attempt to harass
4 Netflix by requiring it to mount a search for and produce documents that could fall within the
5 literal terms of snippets of the claims of its patents.

6 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
7 narrowed Request that could possibly yield materials relevant to this case without imposing the
8 burdens associated with a search for documents responsive to the Request in its current form,
9 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
10 corresponding search for documents responsive to, the Request as currently phrased.

11 **REQUEST FOR PRODUCTION NO. 115:**

12 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
13 description, or disclosure, prior to April 28, 1999, of, in response to a specified date being
14 reached, providing a customer a second set of one or more items indicated by item selection
15 criteria.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 115:**

17 Refer to Netflix's response to Request for Production No. 114.

18 **REQUEST FOR PRODUCTION NO. 116:**

19 All MATERIALS constituting, recording, referring to, or evidencing any use, practice,
20 description, or disclosure, prior to April 28, 1999, of, in response to a specified fee being
21 received, providing a customer a second set of one or more items indicated by item selection
22 criteria.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 116:**

24 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
25 Request could be read to purport to require Netflix to conduct a search for and produce materials
26 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
27 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
28 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as

1 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
2 construction well prior to the date provided for in the Court's Case Management Order and the
3 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
4 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
5 documents literally called for by the Request, without any further context, Netflix objects to the
6 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
7 discovery of admissible evidence. This Request is nothing more than an attempt to harass
8 Netflix by requiring it to mount a search for and produce documents that could fall within the
9 literal terms of snippets of the claims of its patents.

10 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
11 narrowed Request that could possibly yield materials relevant to this case without imposing the
12 burdens associated with a search for documents responsive to the Request in its current form,
13 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
14 corresponding search for documents responsive to, the Request as currently phrased.

15 **REQUEST FOR PRODUCTION NO. 117:**

16 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
17 prior to April 28, 1999, of providing rental items to a customer by mail.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 117:**

19 Netflix objects to this Request as vague, ambiguous, and oppressive. On one hand, this
20 Request could be read to purport to require Netflix to conduct a search for and produce materials
21 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
22 that Blockbuster seeks thereby to require Netflix to construe a claim element that may or may not
23 eventually be in dispute in order to respond to this Request, Netflix objects to the Request as
24 premature in that it seeks to impose upon Netflix a duty to come forward with a claim
25 construction well prior to the date provided for in the Court's Case Management Order and the
26 Local Rules of this Court, and objects to the Request as well as calling for a legal conclusion.
27 Alternatively, to the extent that Blockbuster seeks to have Netflix search for and produce all
28 documents literally called for by the Request, without any further context, Netflix objects to the

1 Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the
2 discovery of admissible evidence. This Request is nothing more than an attempt to harass
3 Netflix by requiring it to mount a search for and produce documents that could fall within the
4 literal terms of snippets of the claims of its patents.

5 Although Netflix is willing to meet and confer with Blockbuster in order to arrive at a
6 narrowed Request that could possibly yield materials relevant to this case without imposing the
7 burdens associated with a search for documents responsive to the Request in its current form,
8 Netflix is not willing to undertake to discern a reasonable interpretation of, and engage in a
9 corresponding search for documents responsive to, the Request as currently phrased.

10 **REQUEST FOR PRODUCTION NO. 118:**

11 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
12 prior to April 28, 1999, of providing rental items to a customer by a delivery agent.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 118:**

14 Refer to Netflix's response to Request for Production No. 58.

15 **REQUEST FOR PRODUCTION NO. 119:**

16 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
17 prior to April 28, 1999, of renting movies.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 119:**

19 Refer to Netflix's response to Request for Production No. 86.

20 **REQUEST FOR PRODUCTION NO. 120:**

21 MATERIALS sufficient to fully describe any use, practice, description, or disclosure,
22 prior to April 28, 1999, of renting games.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 120:**

24 Netflix objects to this Request as vague, ambiguous, and oppressive. Further, this
25 Request could be read to purport to require Netflix to conduct a search for and produce materials
26 that in any way relate to or depend on portions of the claims of the patents-in-suit. To the extent
27 that Blockbuster seeks thereby to require Netflix to construe a claim element, this Request is
28 irrelevant, as Netflix has not asserted a claim containing the above language.

1 Subject to and without waiving the foregoing objection, Netflix will produce all non-
2 privileged, responsive documents so described that are locatable after a diligent search of all
3 locations at which such materials might plausibly exist.

4 **REQUEST FOR PRODUCTION NO. 121:**

5 All MATERIALS referring to or evidencing any use, practice, description or disclosure
6 of any SUBJECT INVENTION or CLAIMED FEATURE at any time before April 28, 1999, or
7 referring to or evidencing any knowledge thereof by NETFLIX or any PERSON UNDER A
8 DUTY OF CANDOR at any time before April 4, 2006.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 121:**

10 Netflix objects that "SUBJECT INVENTION" and "CLAIMED FEATURE", as defined
11 by Blockbuster, are vague and ambiguous. Netflix further objects to this Request to the extent
12 that it calls for information protected by the attorney-client privilege or the work product
13 doctrine.

14 Subject to and without waiving the foregoing objection, Netflix will produce all non-
15 privileged, responsive documents so described that are locatable after a diligent search of all
16 locations at which such materials might plausibly exist.

17 **REQUEST FOR PRODUCTION NO. 122:**

18 All MATERIALS in existence before April 28, 1999, that describe, refer to or evidence
19 any SUBJECT INVENTION or CLAIMED FEATURE.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 122:**

21 Netflix objects that "SUBJECT INVENTION" and "CLAIMED FEATURE", as defined
22 by Blockbuster, are vague and ambiguous. Netflix further objects to this Request to the extent
23 that it calls for information protected by the attorney-client privilege or the work product
24 doctrine.

25 Subject to and without waiving the foregoing objections, Netflix will produce all non-
26 privileged, responsive documents so described that are locatable after a diligent search of all
27 locations at which such materials might plausibly exist.

28

1 **REQUEST FOR PRODUCTION NO. 123:**

2 MATERIALS sufficient to fully describe all rental methods used or practiced by
3 NETFLIX at any time before April 28,1999.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 123:**

5 Netflix objects to this Request to the extent that it calls for information protected by the
6 attorney-client privilege or the work product doctrine.

7 Subject to and without waiving the foregoing objection, Netflix will produce all non-
8 privileged, responsive documents sufficient to fully describe all rental methods used or practiced
9 by NETFLIX at any time before April 28,1999 that are locatable after a diligent search of all
10 locations at which such materials might plausibly exist.

11 **REQUEST FOR PRODUCTION NO. 124:**

12 MATERIALS sufficient to fully describe all rental methods used or practiced by
13 NETFLIX at any time before April 28, 2000.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 124:**

15 Netflix objects to this Request to the extent that it calls for information protected by the
16 attorney-client privilege or the work product doctrine.

17 Subject to and without waiving the foregoing objection, Netflix will produce all non-
18 privileged, responsive documents sufficient to fully describe all rental methods used or practiced
19 by NETFLIX at any time before April 28, 2000 that are locatable after a diligent search of all
20 locations at which such materials might plausibly exist.

21 **REQUEST FOR PRODUCTION NO. 125:**

22 MATERIALS sufficient to fully describe all rental methods used or practiced by
23 NETFLIX at any time as of April 28, 2000.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 125:**

25 Netflix objects to this Request to the extent that it calls for information protected by the
26 attorney-client privilege or the work product doctrine. Netflix further objects that the phrase "at
27 any time as of April 28, 2000" is vague and ambiguous.

28 Subject to and without waiving the foregoing objection, Netflix will produce all non-

1 privileged, responsive documents sufficient to fully describe all rental methods used or practiced
2 by NETFLIX at any time as of April 28, 2000 that are locatable after a diligent search of all
3 locations at which such materials might plausibly exist.

4 **REQUEST FOR PRODUCTION NO. 126:**

5 MATERIALS sufficient to fully describe all rental methods used or practiced by
6 NETFLIX at any time before May 14, 2003.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 126:**

8 Netflix objects to this Request to the extent that it calls for information protected by the
9 attorney-client privilege or the work product doctrine.

10 Subject to and without waiving the foregoing objection, Netflix will produce all non-
11 privileged, responsive documents sufficient to fully describe all rental methods used or practiced
12 by NETFLIX at any time before May 14, 2003 that are locatable after a diligent search of all
13 locations at which such materials might plausibly exist.

14 **REQUEST FOR PRODUCTION NO. 127:**

15 MATERIALS sufficient to fully describe all rental methods used or practiced by
16 NETFLIX at any time as of May 14, 2003.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 127:**

18 Netflix objects to this Request to the extent that it calls for information protected by the
19 attorney-client privilege or the work product doctrine. Netflix further objects that the phrase “at
20 any time as of May 14, 2003” is vague and ambiguous.

21 Subject to and without waiving the foregoing objection, Netflix will produce all non-
22 privileged, responsive documents sufficient to fully describe all rental methods used or practiced
23 by NETFLIX at any time as of May 14, 2003 that are locatable after a diligent search of all
24 locations at which such materials might plausibly exist.

25 **REQUEST FOR PRODUCTION NO. 128:**

26 All MATERIALS asserting, evidencing, reflecting, o[r] referring to any use by NETFLIX
27 of any practice known as “throttling” on or before April 28, 2000.

28

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 128:**

2 Netflix objects to this Request as seeking material that is irrelevant to the subject matter
3 of this action and is not reasonably calculated to lead to the discovery of admissible evidence.
4 Netflix further objects to this Request to the extent that it calls for information protected by the
5 attorney-client privilege or the work product doctrine.

6 **REQUEST FOR PRODUCTION NO. 129:**

7 All MATERIALS asserting, evidencing, reflecting, or referring to any use by NETFLIX
8 of any practice known as "throttling" on or before May 14, 2003.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 129:**

10 Netflix objects to this Request as seeking material that is irrelevant to the subject matter
11 of this action and is not reasonably calculated to lead to the discovery of admissible evidence.
12 Netflix further objects to this Request to the extent that it calls for information protected by the
13 attorney-client privilege or the work product doctrine.

14 **REQUEST FOR PRODUCTION NO. 130:**

15 All MATERIALS asserting, evidencing, reflecting, or referring to any preferential sorting
16 or handling of NETFLIX mail.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 130:**

18 Netflix objects to this Request as seeking material that is irrelevant to the subject matter
19 of this action and is not reasonably calculated to lead to the discovery of admissible evidence.
20 Netflix further objects to this Request to the extent that it calls for information protected by the
21 attorney-client privilege or the work product doctrine.

22 **REQUEST FOR PRODUCTION NO. 131:**

23 All MATERIALS evidencing, reflecting, or referring to any COMMUNICATIONS
24 between NETFLIX and any employee of the United States Postal Service concerning any
25 preferential sorting or handling of NETFLIX mail.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 131:**

27 Netflix objects to this Request as seeking material that is irrelevant to the subject matter
28 of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

1 Netflix further objects to this Request to the extent that it calls for information protected by the
2 attorney-client privilege or the work product doctrine.

3 **REQUEST FOR PRODUCTION NO. 132:**

4 All MATERIALS evidencing, reflecting, or referring to any COMMUNICATIONS
5 between William J. Henderson and the United States Postal Service concerning NETFLIX.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 132:**

7 Netflix objects to this Request as seeking material that is irrelevant to the subject matter
8 of this action and is not reasonably calculated to lead to the discovery of admissible evidence.
9 Netflix further objects to this Request to the extent that it calls for information protected by the
10 attorney-client privilege or the work product doctrine.

11 **REQUEST FOR PRODUCTION NO. 133:**

12 All of the following MATERIALS referred to on Page 4 of Netflix's June 26, 2006 Initial
13 Disclosures Under Rule 26 of the Federal Rules of Civil Procedure:

- 14 1. Documents publicly available at the Internet addresses <http://netflix.com> and
15 <http://blockbuster.com>.
- 16 2. U.S. Patents 6,584,450 and 7,024,381 and their prosecution histories.
- 17 3. Documents relating to the conception of the invention described in the
18 abovementioned patents.
- 19 4. Documents and/or references cited in each of the above-mentioned patents.
- 20 5. Documents relating to the reduction to practice of the invention described in the
21 above-mentioned patents.
- 22 6. Documents relating to industry recognition of the invention described in the
23 abovementioned patents.
- 24 7. Documents relating to competitive information and analyses about Blockbuster.
- 25 8. Documents relating to Netflix's financial information.
- 26 9. Documents relating to Netflix's practice of the invention described in the
27 abovementioned patents.
- 28 10. Documents relating to Blockbuster's conception of the Blockbuster Online

1 service.

2 11. Documents relating to Blockbuster's competitive information and analyses about
3 Netflix.

4 12. Documents relating to Blockbuster's financial information.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 133:**

6 Netflix objects to this Request to the extent that it calls for information protected by the
7 attorney-client privilege or the work product doctrine.

8 Netflix will produce all non-privileged, responsive documents so described that are
9 locatable after a diligent search of all locations at which such materials might plausibly exist.

10 **REQUEST FOR PRODUCTION NO. 134:**

11 All MATERIALS identified in the disclosure statement to be provided by NETFLIX by
12 July 28, 2006, in accordance with Paragraph 1 of the Court's Case Management Order of June
13 30, 2006.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 134:**

15 Netflix objects to this Request to the extent that it calls for information protected by the
16 attorney-client privilege or the work product doctrine.

17 Netflix will produce all non-privileged, responsive documents so described that are
18 locatable after a diligent search of all locations at which such materials might plausibly exist.

19

20 Dated: August 14, 2006

KEKER & VAN NEST, LLP

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22

By: 

KEVIN T. REED
Attorneys for Plaintiff
NETFLIX, INC.

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PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

On August 14, 2006, I served the following document(s):

NETFLIX'S RESPONSES TO BLOCKBUSTER'S FIRST SET OF REQUESTS FOR PRODUCTION

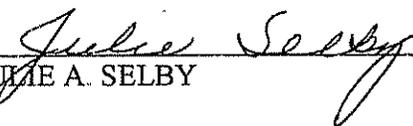
by **E-MAIL VIA PDF FILE**, by transmitting on this date via e-mail a true and correct copy scanned into an electronic file in Adobe "pdf" format. The transmission was reported as complete and without error.

by **COURIER**, by placing a true and correct copy in a sealed envelope addressed as shown below, and dispatching a messenger from WORLDWIDE NETWORK whose address is , with instructions to hand-carry the above and make delivery to the following during normal business hours, by leaving the package with the person whose name is shown or the person authorized to accept courier deliveries on behalf of the addressee.

Marshall B. Grossman, Esq.
William J. O'Brien, Esq.
Alschuler Grossman Stein & Kahan LLP
1620 26th Street, 4th Floor, North Tower
Santa Monica, CA 90404-4060
mgrossman@agsk.com
wobrien@agsk.com

Executed August 14, 2006, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



JULIE A. SELBY