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 18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**
 20 **SAN FRANCISCO DIVISION**

21 **OPENTV, INC., and NAGRA FRANCE**)
SAS,)
 22)
Plaintiffs,)
 23)
v.)
 24)
NETFLIX, INC.,)
 25)
Defendant.)

Case Nos.: 3:14-cv-01525-RS
 3:14-cv-01723-RS

**STIPULATION & [PROPOSED]
 E-DISCOVERY ORDER**

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 28 STIPULATION & [PROPOSED]
 E-DISCOVERY ORDER

3:14-cv-01525-RS
 3:14-cv-01723-RS

1 Upon the stipulation of the parties, the Court ORDERS as follows:

2 1. This Order supplements all other discovery rules and orders. It streamlines
3 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive
4 determination of this action, as required by Federal Rule of Civil Procedure 1.”

5 2. This Order may be modified in the Court’s discretion or by stipulation. The parties
6 shall jointly submit any proposed modifications within 30 days after the Federal Rule of Civil
7 Procedure 16 Conference.

8 3. As in all cases, costs may be shifted for disproportionate ESI production requests
9 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory
10 discovery tactics are cost-shifting considerations.

11 4. A party’s meaningful compliance with this Order, and efforts to promote efficiency
12 and reduce costs, will be considered in cost-shifting determinations.

13 5. The parties are expected to comply with the District’s E-Discovery Guidelines
14 (“Guidelines”) and are encouraged to employ the District’s Model Stipulated Order Re: the
15 Discovery of Electronically Stored Information and Checklist for Rule 26(f) Meet and Confer
16 regarding Electronically Stored Information.

17 6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
18 shall not include email or other forms of electronic correspondence (collectively “email”). To obtain
19 email parties must propound specific email production requests in accordance with Paragraph 9.

20 7. Email production requests shall only be propounded for specific issues, rather than
21 general discovery of a product or business.

22 8. Email production requests shall be phased to occur after the parties have exchanged
23 initial disclosures and basic documentation about the patents, the prior art, the accused
24 instrumentalities, and the relevant finances. While this provision does not require the production of
25 such information, the Court encourages prompt and early production of this information to promote
26 efficient and economical streamlining of the case.

1 9. Email production requests shall identify the custodian, search terms, and time frame.
2 The parties shall cooperate to identify the proper custodians, proper search terms and proper
3 timeframe as set forth in the Guidelines.

4 10. Each requesting party shall limit its email production requests to a total of five
5 custodians per producing party for all such requests. The parties may jointly agree to modify this
6 limit without the Court’s leave. The Court shall consider contested requests for additional
7 custodians, upon showing a distinct need based on the size, complexity, and issues of this specific
8 case. Cost-shifting may be considered as part of any such request.

9 11. Each requesting party shall limit its email production requests to a total of five search
10 terms per custodian per party. The parties may jointly agree to modify this limit without the Court’s
11 leave. The Court shall consider contested requests for additional search terms per custodian, upon
12 showing a distinct need based on the size, complexity, and issues of this specific case. The Court
13 encourages the parties to confer on a process to test the efficacy of the search terms. The search
14 terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing
15 company’s name or its product name, are inappropriate unless combined with narrowing search
16 criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple
17 words or phrases (*e.g.*, “computer” and “system”) narrows the search and shall count as a single
18 search term. A disjunctive combination of multiple words or phrases (*e.g.*, “computer” or “system”)
19 broadens the search, and thus each word or phrase shall count as a separate search term unless they
20 are variants of the same word. Use of narrowing search criteria (*e.g.*, “and,” “but not,” “w/x”) is
21 encouraged to limit the production and shall be considered when determining whether to shift costs
22 for disproportionate discovery. Should a party serve email production requests with search terms
23 beyond the limits agreed to by the parties or granted by the Court pursuant to this paragraph, this
24 shall be considered in determining whether any party shall bear all reasonable costs caused by such
25 additional discovery.

1 12. Nothing in this Order prevents the parties from agreeing to use technology assisted
2 review and other techniques insofar as their use improves the efficacy of discovery. Such topics
3 should be discussed pursuant to the District's E-Discovery Guidelines.
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IT IS SO STIPULATED, through Counsel of Record.

Dated: November 6, 2014 /s/ John R. Edwards
Counsel for Plaintiffs

Dated: November 6, 2014 /s/ Laura E. Miller
Counsel for Defendant

IT IS ORDERED that the forgoing Agreement is approved.

Dated: 11/13/14 
Richard Seeborg
United States District Judge

1 **SIGNATURE ATTESTATION**

2 Pursuant to Local Rule 5-1(i)(3), I hereby attest that I have obtained concurrence in the filing
3 of this document from all the signatories for whom a signature is indicated by a "conformed"
4 signature (/s/) within this e-filed document and I have on file records to support this concurrence for
5 subsequent production to the Court if so ordered for inspection upon request.

6 Dated: November 6, 2014

/s/ John R. Edwards

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