

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ROBOCAST, INC., a Delaware corporation  
  
Plaintiff and Counterclaim Defendant,  
  
v.  
  
NETFLIX, INC., a Delaware limited liability  
company  
  
Defendant and Counterclaim Plaintiff.

C.A. No. 1:22-cv-00305-RGA-JLH

[PUBLIC VERSION]

**PLAINTIFF'S DISCOVERY DISPUTE LETTER**

Dated: November 22, 2023

OF COUNSEL:

Steven Rizzi (*pro hac vice*)  
McKool Smith, P.C.  
395 9th Avenue, 50th Floor  
New York, NY 10001-8603  
(212) 402-9400  
srizzi@McKoolSmith.com

Ramy E. Hanna (DE Bar Id #: 5494)  
McKool Smith, P.C.  
600 Travis St., Suite 7000  
Houston, TX 77002  
(713) 485-7312  
rhanna@McKoolSmith.com

Ari Rafilson (*pro hac vice*)  
William D. Ellerman (*pro hac vice*)  
Casey L. Shomaker (*pro hac vice*)  
Samuel L. Moore (*pro hac vice*)  
McKool Smith, P.C.  
300 Crescent Court, Suite 1500  
Dallas, Texas 75201  
(214) 978-4000  
arafilson@mckoolsmith.com  
wellerman@mckoolsmith.com  
cshomaker@mckoolsmith.com  
smoore@mckoolsmith.com

Stephen B. Brauerman (#4952)  
Ronald P. Golden III (#6254)  
600 N. King Street, Suite 400  
Wilmington, DE 19801  
(302) 655-5000  
Fax: (302) 658-6395  
sbrauerman@bayardlaw.com  
rgolden@bayardlaw.com

ATTORNEYS FOR PLAINTIFF  
ROBOCAST, INC.

Marc N. Henschke (*pro hac vice*)  
Steven M. Coyle (*pro hac vice*)  
Andrew C. Ryan (*pro hac vice*)  
Nicholas A. Geiger (*pro hac vice*)  
Sara T. Colburn (*pro hac vice*)  
CANTOR COLBURN LLP  
20 Church Street, 22nd Floor  
Hartford, CT 06103  
Tel. (860) 286-2929  
mhenschke@cantorcolburn.com  
scoyle@cantorcolburn.com  
aryan@cantorcolburn.com  
ngeiger@cantorcolburn.com  
scolburn@cantorcolburn.com

Dear Judge Hall:

Netflix's letter demonstrates that its "disputes" are fictional and serve only to distract from Netflix's own discovery deficiencies as articulated in D.I. 129. The facts demonstrate that both issues raised by Netflix are moot. The parties' meet and confer of November 2, 2023, weeks before Netflix filed its motion, is particularly telling. At that time, Robocast confirmed to Netflix that its "hope and our goal [is] that [the post-2014 documents] *will be produced by the substantial document production deadline.*" Ex. 3 at 13. Yet, Netflix still insisted that this issue was "ripe ... for the [C]ourt," Ex. 3 at 14, because Robocast had not committed to a "date certain," Ex. 3 at 14-17, despite confirmation that Robocast "just told you that we are endeavoring to produce the documents *by the November 17th deadline.* If that's not a date certain, then, honestly, I don't know what is..." Ex. 3 at 16. Undeterred, Netflix raised a dispute it knew was moot. As to its second dispute, Robocast also supplemented its response to Netflix's interrogatory 15. Netflix's motion should be denied on both counts.

**Background:** Prior to November 2023, Robocast, a company of limited resources and employees, had produced over a million documents. In contrast, Netflix, a goliath, had produced only 4,803 documents, the vast majority of which were public, non-responsive documents (as discussed in Robocast's opening letter brief, D.I. 129). Netflix's letter would have the Court believe that Robocast has done nothing in discovery to date when the reality is that Robocast produced *more than 99% of its documents* well before the date for substantial completion of document production. Netflix, on the other hand: (i) produced the majority of its still-deficient production in November 2023 (more than 6 months after receipt of Robocast's first requests for production); and (ii) has not responded to nearly all of Robocast's written discovery. Setting aside Netflix's rhetoric, Robocast addresses Netflix's specific requests below.

**Robocast's Production of Post-2014 documents:** This request, as Netflix knew when it filed its letter, is moot. In compliance with its obligations, and the Court's order at the August 29, 2023 hearing, Robocast represented that it would substantially complete its production of these documents by November 17, 2023. And Robocast did. Notwithstanding its objections, Robocast produced post-2014 responsive, pre-patent expiration, and non-privileged documents. Ex. 4 at 5.<sup>1</sup> Netflix was aware of this production over 7 hours before filing its letter. Ex. 2; *see also* D.I. 46. Robocast even told Netflix about the content of the production. On the November 17, 2023 meet and confer (after the production was made), Robocast explained that its production "contains documents that are responsive to Netflix's first and second RFPs, and also is made in compliance with the [C]ourt's order on the last teleconference that Robocast search for and produce post 2014 documents." Ex. 4 at 5. Having complied with its representation, Robocast asked Netflix to withdraw this topic from the list of issues for the upcoming teleconference with the Court. Ex. 4 at 6. Netflix refused. Netflix also chose not to conduct even a preliminary review of Robocast's

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<sup>1</sup> This production did not include e-mail type documents. Robocast has approached Netflix about a mutual production of such documents, but Netflix has refused to engage on the topic. Robocast reserves the right to approach the Court regarding email production should Netflix continue its refusal to engage or the parties reach an impasse on an appropriate scope, time, and manner of production of such documents.

production to confirm Robocast's representations, opting instead to hide its head in the sand about the mootness of its request.

There was no ambiguity concerning Robocast's position. Robocast confirmed during the November 2 and November 17, 2023 meet and confers that it was *not withholding documents based on their date*. (Ex. 3 at 11-12, 23; Ex. 4 at 5-6). In fact, Robocast confirmed at least *nine* times on the November 17 meet and confer that it would fully comply with this Court's Order regarding production of post-2014 documents. Ex. 4 at 5, 14-15, 20-21, 24-25. Robocast also confirmed that despite its objections to Netflix's overbroad second set of RFPs and the fact that this Court's order regarding production of post-2014 documents issued before Robocast's responses to that set of RFPs was due, Robocast's "production contains documents that are responsive to Netflix's first and second RFPs." Ex. 3 at 5. There is therefore no "lack of clarity" as to what Robocast produced and what it is withholding. D.I. 131 at 2.

Finally, it did not "take[] several months of correspondence, multiple meet and confers, and the instant motion for Robocast to make its production."<sup>2</sup> D.I. 131 at 1, n.1. Since litigation is currently a primary focus of Robocast, complying with the Court's directive involved complex document collection and analysis. Robocast's in-house and outside counsel began working shortly after this Court's August 29, 2023, Oral Order to locate all documents in its possession that were created after 2014, and it kept Netflix well-apprieved about its efforts. For example, on September 13, Robocast advised Netflix that it was working on its production of post-2014 documents. Ex. 5 at 40-41. On October 11, Robocast reminded Netflix that post-2014 documents in Robocast's possession contain many privileged materials, and that it was taking time for Robocast to "locate, screen, and produce responsive, non-privileged documents." *Id.* at 29-30. On November 2, Robocast informed Netflix that it was fully complying with the Court's directive, that it had been "for weeks searching for and collecting [post-2014] documents" (Ex. 3 at 6-7), that Robocast was "endeavoring, as fast as we can, to review and produce [post-2014] documents" (*id.* at 8), and that it was Robocast's "hope and our goal that [the documents] *will be produced by the substantial document production deadline*." *Id.* at 13. Robocast further stated that because of the amount of privileged information in the documents, "[t]he review and collection is taking a significant amount of time and effort." *Id.* at 19.

Because Robocast has complied with its obligations, Netflix's request should be denied as moot.

**Interrogatory No. 15:** This interrogatory asks Robocast to identify all expenses and sources of income *since the conception of the patents-in-suit*. It therefore seeks discovery of the entire universe of Robocast's finances from approximately 1996 to 2020. Ex. 3 at 65, 69. Given this extreme overbreadth, Robocast invited Netflix to meet and confer about its scope. Ex. 8 at 2. At the parties' September 18 meet and confer, Robocast pointed out to Netflix that in its response to Robocast's Rog No. 2, Netflix stated that it first offered the accused functionalities in August of 2012 (a statement Netflix later explained is not true for a number of its platforms), and that

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<sup>2</sup> This issue was included in the joint motion for discovery conference only because Netflix refused to join the motion without it. Yet Netflix now acknowledges that this issue is not ripe. *See* D.I. at 2 (Netflix's request for "an opportunity to review Robocast's November 17 production and provide the Court with a one-page reply to address Robocast's most recent production"). Because there is simply no viable dispute here, the Court should deny Netflix's request for additional briefing.

discovery dating back to before that time was thus critically relevant to the hypothetical negotiation. Robocast further suggested that because its financial condition around that time would likewise be relevant to the hypothetical negotiation, the parties should mutually agree to produce responsive documents from 2011-2013 as a starting point to fulfilling their discovery obligations on this issue.<sup>3</sup> Once the parties had reviewed that production, they could then evaluate the need for additional information. In response, Netflix's counsel represented that they would confer with Netflix about producing responsive documents from that date range. Ex. 5 at 29-30, 34-35; Ex. 6 at 7; Ex. 3 at 59. However, counsel never responded with Netflix's position on that proposed compromise, despite Robocast's repeated urging.

Having obtained no agreement from Netflix on the appropriate timeframe for discovery, Robocast nevertheless supplemented its response to Rog 15 in accordance with the staged process that it proposed.<sup>4</sup> Specifically, on November 2, 2023, Robocast produced its tax returns from 2011 through 2013, and it supplemented its response to Rog 15 to identify those documents pursuant to Rule 33(d). Ex. 8 at 2. Meanwhile, Netflix has yet to produce any meaningful discovery from prior to 2016 (which is a subject for the upcoming teleconference), but it has nevertheless continued to insist that Robocast produce approximately **20 years** of additional financial information.<sup>5</sup>

Netflix also accuses Robocast's counsel of having "no idea" whether Robocast had responsive financial documents within the date range of 2012 to 2020, which is yet another misrepresentation. The passage Netflix cites for this statement does not pertain to a discussion of Rog 15, but rather to Netflix's second RFPs. Ex. 7 at 40-41. And what Robocast actually said was that in its upcoming production (which was made on November 17), Robocast would produce revenue documents, and that it was not Robocast's "intent to withhold any non-privileged, non e-mail documents that appear to be responsive to Netflix's requests," but that Robocast needed to confirm that it had "captured revenue documents from the very broad time period of 2012 to 2020 solely because [the parties'] prior discussions had been limited to 2011 to 2013." *Id.* at 40-41.

In any event, in light of Netflix's waffling on a mutual agreement regarding the timeframe for discovery, and notwithstanding the improper breadth of the Rog at issue, Robocast decided to end any potential controversy from its end, and on November 21, 2023, it supplemented its response to Rog 15 to include responsive information of which Robocast is aware under Rule 33(d). Ex. 8 at 2. Accordingly, Netflix's second issue is also moot and should be denied.

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<sup>3</sup> This offer was without prejudice to Robocast's ability to pursue the full scope of the discovery it is permitted under the rules.

<sup>4</sup> Netflix claims that Robocast took the position that "Netflix had agreed to narrow the date range to August 2011 through August 2013." Not so. As the transcripts of the parties' conferences indicate, Robocast proposed this mutual compromise position, but Netflix never agreed to it. Accordingly, Robocast decided to "abide by what we represented we would do," and it produced financial information from 2011-2013. Ex. 3 at 59.

<sup>5</sup> At the parties' November 2 conference, Robocast asked Netflix whether it was "committing to produce its own financial information from outside the damages period." Ex. 3 at 66. In response, Netflix chastised Robocast for "chang[ing] the topic" and refused to answer. *Id.*

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