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December 21, 2023

BY CM/ECF

Honorable Jennifer L. Hall
J. Caleb Boggs Federal Building
844 N. King Street, Unit 17, Room 6312
Wilmington, DE 19801-3555

Re: *Robocast, Inc. v. Netflix, Inc.*, C.A. No. 22-305-RGA-JLH

Dear Judge Hall:

Robocast has filed objections to the very Order of this Court that Robocast complains that Netflix has not responded to quickly enough. D.I. 146. Notwithstanding that Your Honor's Order is subject to briefing in progress before Judge Andrews, Netflix is nonetheless diligently working on Robocast's requests from its December 7 letter. D.I. 148, Ex. 1 at 2 (K. Li 12/15/2023 Email). Contrary to Robocast's mischaracterizations, Netflix has not given itself an extension of time (the Order was silent as to timing) nor has Netflix delayed in gathering the discovery Robocast seeks (such work commenced immediately upon receipt). Robocast's requests necessarily requires input from Netflix employees. As was made clear in Netflix's acknowledgment of Robocast's December 7 letter, the holidays have inhibited Netflix's collection effort and impacted the timing of its response. The necessary respondents and facilitators of information gathering at Netflix are on Winter holiday. Netflix endeavors to provide a response to Robocast's letter as soon as those who are able to respond substantively regarding Robocast's requests can do so. While Netflix cannot guarantee timing for Netflix employees who are currently unavailable and not in communication, Netflix expects to provide a status update by January 5, and produce responsive documents it is able to locate the following week.

To be clear, Netflix did not take the position that it need not comply with the Order until Robocast's Objections are resolved, as Netflix is undertaking investigations in response to Robocast's requests.¹ The plain language of Netflix's correspondence dispels Robocast's clear misinterpretation. Netflix's intent was to emphasize that the changing and uncertain scope of requests and moving targets compound the burden on Netflix and its employees, and to explain that Robocast's serial requests take time to investigate.

¹ Though a stay of a discovery order pending resolution of a party's objections is a sensible way to proceed and has been adopted in similar circumstances on the request of the responding party. *See, e.g., Ex. 1, Fraunhofer-Gesellschaft zur Forderung der Angewandten Forschung E.V. v. Sirius XM Radio Inc.*, No. 17-184-JFB, D.I. 586 (D. Del. Jul. 12, 2022). This practice highlights the absurdity of Robocast's complaints and demand for compliance when Robocast is the one seeking to broaden the scope of Your Honor's Order.



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Robocast has only itself to blame for any discontent it has with the timing of this process, which far predates Robocast's filing of its December 7 letter. Robocast was given clear guidance by the Court during the August 29 teleconference as to what it needed to do to show good cause for the pre-2016 documents it now seeks. Ex. 2, Aug. 29, 2023 Hr'g Tr. 55:7-17. Netflix spent countless hours trying to work with Robocast to understand what it was seeking and why. D.I. 133 at 2. Robocast nevertheless failed to streamline its blanket requests for pre-2016 documents and obstructed the parties' ability to meaningfully resolve this dispute before the substantial completion deadline. The day before the November 29 teleconference, the Court expressly ordered that Robocast be prepared to "explain how [it] complied with the Court's prior ruling on this issue," including identifying specific requests for which Robocast sought discovery and explaining why Robocast needed documents predating 2016. *See* D.I. 135. But, during the hearing, Robocast still spoke in generalities instead of identifying specific requests or articulating good cause for seeking pre-2016 documents. D.I. 148, Ex. 2 at 18:1-5, 28:14-16. Indeed, the Court recognized that Robocast's requests were lacking in specificity. *Id.* at 9:13-24 ("it seems like what might have been going on here is you were saying we want everything going back to 2012"), 19:10-12 ("[o]ne might also say that [Robocast] could have given [Netflix] some examples of the types of stuff you were looking for"). Even after the Court gave Robocast yet another opportunity to narrow its requests and make its showing of good cause, Robocast then delayed over a week after the Court's November 29 oral Order before transmitting its requests to Netflix until December, and at a time of year that Robocast very well knows can be difficult to secure employee availability. *See* D.I. 140. Robocast's December 7 letter unilaterally demanded that Netflix provide substantive responses a mere week from its filing. Robocast's claim that this arbitrary deadline it imposed was "ample time" is untenable in view of the months that Robocast took even to articulate its requests, and the still-amorphous scope of such requests. *See* D.I. 148 at 1.

At bottom, even Netflix's best efforts and intentions cannot satisfy Robocast's arbitrary and unwarranted demands for a discovery response between Christmas and New Year's after Robocast consistently delayed in narrowing its requests and showing good cause, as ordered by the Court. Indeed, this letter exchange is a waste of the Court's and the parties' resources at a time where the parties are briefing Robocast's objections to Your Honor's discovery Order, and otherwise submitting claim construction briefing. Any response compelled by an artificial and unreasonably timed deadline is limited by the information and documents Netflix is able to obtain from its available employees; rather, allowing Netflix employees to return after the holidays to assist in the preparation of an accurate and thoroughly investigated response benefits both parties.

Respectfully,

/s/ Kelly E. Farnan

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cc: All Counsel of Record (CM/ECF)