

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

| | | |
|----------------|---|----------------------------|
| OPENTV, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | C.A. No. _____ |
| v. |) | |
| |) | JURY TRIAL DEMANDED |
| NETFLIX, INC., |) | |
| |) | |
| Defendant. |) | |

COMPLAINT FOR PATENT INFRINGEMENT

1. This patent infringement action is being filed by OpenTV, Inc. (“OpenTV”), a U.S. subsidiary company of Kudelski SA. Kudelski SA and its subsidiaries, including Plaintiff OpenTV, Inc., make up the various companies of The Kudelski Group. The history of The Kudelski Group is one highlighted by 60 years of innovation, award winning products, and loyal, long-term customers who entrust The Kudelski Group with their business. Today, The Kudelski Group is a major employer in the United States, Europe, Asia, and elsewhere, providing jobs in manufacturing, engineering, research and development, marketing, sales, and many other specialties.

2. In 1951, Stefan Kudelski created the first company in what became The Kudelski Group and launched the now legendary “Nagra” line of portable recording devices for cinema, TV and radio recording. Stefan Kudelski’s recording devices, and the inventions in them, were considered revolutionary throughout the movie industry. The Nagra devices allowed precise synchronization of audio tape with film, providing filmmakers with studio sound quality during on-location filming.

3. Throughout his career, Stefan Kudelski received numerous awards and honors for his technological achievements. For example, Mr. Kudelski received four Oscars from the

Academy of Motion Picture Arts and Sciences: three Scientific or Technical Awards in 1965, 1977, 1978, and the Gordon E. Sawyer Award in 1990. Mr. Kudelski also received two Emmy Awards, as well as Gold Medals from L. Warner, Audio Engineering Society, Lyra and Eurotechnica. Mr. Kudelski also was recognized by the FBI for his technology contribution in audio recording.

4. The success of the products that The Kudelski Group manufactured and sold in its early years allowed the company to grow and expand. In 1989, The Kudelski Group expanded the field of its technological innovation by launching its first conditional access systems for pay TV. Over the next decade (1990-1999), The Kudelski Group continued to expand its technology development in the digital television domain, providing global, universally compatible solutions to manage, organize, enhance, market, and secure digital content, regardless of whether it was transmitted over managed or unmanaged networks, broadcast linearly or on-demand.

5. Today, digital television is The Kudelski Group's core business. The Kudelski Group has become a world leader in digital security and convergent media solutions for the delivery of digital and interactive content. The Kudelski Group's main focus is on innovating security and access control solutions that provide optimal levels of protection throughout the content distribution chain, from creation to consumption. The Kudelski Group's innovations are continuously contributing to the evolution of the digital television ecosystem, enabling operators to extend their multimedia offerings across the entire digital ecosystem to numerous client devices through traditional managed networks as well as Internet delivery.

6. At the same time, The Kudelski Group has forged itself as a leader in the digital television domain through acquisitions of pioneering technology companies. Throughout its history, The Kudelski Group has made numerous corporate and technology acquisitions in the

space, including acquiring such notable companies as Lysis, Livewire, MediaGuard, SmarDTV, and Plaintiff, OpenTV, Inc. (“OpenTV”). The Kudelski Group also has other subsidiary companies and business units in other technology sectors, such as SkiData, which operates in the public access sector, NagraID, which manufactures smart cards, and the recently created Kudelski Security business offering companies a suite of personalized cyber-security services.

7. OpenTV develops software that provides its customers with high quality technology, services, and end-to-end solutions enabling intuitive and personalized viewing experiences for consumers. OpenTV’s software solutions enable a variety of advanced and interactive services for television, including advanced user interfaces, video-on-demand (“VOD”), personal video recording (“PVR”), high-definition (“HD”), interactive and addressable advertising, and a variety of enhanced television applications.

8. OpenTV’s success as a member of The Kudelski Group is due in large part to its worldwide emphasis on intellectual property. OpenTV benefits from one of the earliest and broadest patent portfolios in the industry. OpenTV’s patented technology has been vital in allowing OpenTV’s customers to accelerate technological progress, enhance market opportunities, and improve profitability.

9. Several statistics vividly illustrate the quality and commercial success of OpenTV’s intellectual property as well as the significant investments that The Kudelski Group has made historically in research and development efforts. For example, there are more than:

- 200 million digital set-top boxes and televisions that have been shipped to consumers with OpenTV software;
- 80 worldwide customers who run OpenTV solutions, including 40 OEMs who have ported OpenTV software to more than 250 digital set-top box models; and
- 815 patents owned by the OpenTV subsidiary of The Kudelski Group worldwide to date.

10. Headquartered in San Francisco, California, OpenTV has offices throughout the world, including offices in the United States, France, Australia, and China. OpenTV employs approximately 450 people worldwide, including more than 200 in the United States. As a whole, nearly 400 people work for the various U.S. subsidiaries of The Kudelski Group in the United States.

11. OpenTV vigorously protects its intellectual property and thus files this patent infringement complaint against Netflix, Inc. (“Netflix”) after repeated, unsuccessful attempts to prevent the unlicensed use of OpenTV’s patented technology.

12. OpenTV asserts that Netflix willfully infringes the following seven U.S. Patents (the “Asserted Patents”):

- 6,018,768 entitled “Enhanced Video Programming System and Method for Incorporating and Displaying Retrieved Integrated Internet Information Segments” (“the ’768 Patent”) (Exhibit A hereto);
- 6,233,736 entitled “Media Online Service Access System and Method” (“the ’736 Patent”) (Exhibit B hereto);
- 7,055,169 entitled “Supporting Common Interactive Television Functionality Through Presentation Engine Syntax” (“the ’169 Patent”) (Exhibit C hereto);
- 7,409,437 entitled “Enhanced Video Programming System and Method for Incorporating and Displaying Retrieved Integrated Internet Information Segments” (“the ’437 Patent”) (Exhibit D hereto);
- 7,490,346 entitled “Digital Television Application Protocol for Interactive Television” (“the ’346 Patent”) (Exhibit E hereto);
- 7,949,722 entitled “Enhanced Video Programming System and Method Utilizing User-Profile Information” (“the ’722 Patent”) (Exhibit F hereto); and
- 8,107,786 entitled “Systems and Methods to Modify Playout or Playback” (“the ’786 Patent”) (Exhibit G hereto).

13. OpenTV seeks damages in an amount adequate to compensate OpenTV for Netflix’s infringement, increased damages for willful infringement, a permanent injunction

barring Netflix from continuing to infringe OpenTV's patents, and OpenTV's attorneys' fees and costs associated with this action.

BACKGROUND OF THE TECHNOLOGY

14. The technology at issue in this case pertains generally to the fields of access, selection, control, securitization, and delivery of content, and specifically here, in the field of Over-the-Top ("OTT") delivery of content (such as movies, television, and other media) over the Internet.

15. OTT delivery is done through an ordinary Internet connection that is not tied to the type of content being delivered.

16. In the OTT model, an Internet service provider is responsible only for ensuring that data can be received by the consumer through a provided Internet connection. Third-party content providers can then utilize this connection to deliver any desired content to the consumer. Because the OTT model evolved out of the TV and Internet spaces, OTT providers, like Netflix, tend to benefit heavily from the capital expenditures and investments in technology made in the past by both (i) broadband network providers to develop the kind of reliable Internet service needed to support the high bandwidth usage demanded by OTT delivery, and (ii) traditional pay TV operators to develop systems to deliver their services to consumers via cable and satellite systems.

17. OTT content, including OTT content delivered by Netflix, can often be viewed on a myriad of connected devices, such as televisions, gaming consoles, personal computers, tablets, smartphones, and many other connected devices.

18. According to Accenture research, half of all U.S. consumers now watch OTT video through broadband connections on their televisions. Among viewers between the ages of

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