

United States District Court
Western District of Texas
Austin Division

Affinity Labs of Texas, LLC,

Plaintiff,

v.

Netflix, Inc.

Defendant.

Case No. 1:15-cv-00849-RP

Jury Trial Demanded

**Affinity Lab's Identification of Asserted Claims and
Initial and Preliminary Infringement Contentions
for U.S. Patent No. 9,444,868**

Plaintiff Affinity Labs of Texas, LLC ("Affinity Labs") serves the following identification of asserted claims and initial infringement contentions for U.S. Patent No. 9,44,868 ("the '868 patent") pursuant to the Court's September 21, 2016 Order (D.I. 59). Affinity Labs' identification of asserted claims and initial infringement contentions (hereinafter, "Initial Contentions") are provided subject to the limitations described below.

Affinity Labs submits these Initial Contentions at the beginning of fact discovery, before receiving a claim construction order and before expert discovery. To date, Netflix has failed to produce documents sufficient to understand the full operation of the Netflix on-demand Internet streaming media service. Affinity Labs bases these Initial Contentions upon publicly available information and hereby incorporates in full the allegations set forth in its First Amended Complaint (D.I. 60). As set forth in Federal Rule of Civil Procedure 26(e), Affinity Labs reserves the right to amend, modify, or supplement its Initial Contentions. Affinity Labs further reserves the right to supplement its Initial Contentions

following the construction of relevant claim terms and/or other relevant order(s) by the Court. Affinity Labs will marshal evidence and provide expert analysis proving Netflix's infringement on an element-by-element basis as set forth in the Court's scheduling order for discovery and expert discovery.

Citations to particular documents or portions of documents in these Initial Contentions are merely representative for the purposes of providing notice of Netflix's infringement at this early stage of the litigation and should not be construed as limiting in any way. Nothing in these Initial Contentions therefore should be construed to limit discovery to any particular or specific media systems and/or methods Netflix may have made, used, offered for sale, sold in the United States or imported into the United States. Statements made herein are not intended as admissions regarding the meaning of any claim term of the '868 patent. Furthermore, statements made herein are not an admission that any unidentified (or unknown) aspect(s) of Netflix's streaming media systems and/or methods do not infringe the asserted claims.

Asserted Claims

Affinity Labs alleges that each and every claim element of claims 1-13 of the '868 patent is infringed, directly or indirectly, either literally or under the doctrine of equivalents.

As set forth in the First Amended Complaint (D.I. 60), Netflix infringes claims 1-13 of the '868 patent because Netflix, by itself or together with its subsidiaries, manufactures, offers to sell, sells, uses, distributes, and/or services systems covered by the '868 patent, including but not limited to, the Netflix on-demand Internet streaming media service, and/or further, Netflix contributes to and induces its customers to infringe because Netflix advertises and instructs its end users and subscribers to stream Netflix's media library in a

manner that directly infringes the '868 patent, and because the Netflix on-demand Internet streaming media service is especially adapted to infringe the '868 patent and there are no substantial non-infringing uses. As such, Netflix is liable for infringement under 35 U.S.C. § 271(a), (b), & (c).

Affinity Labs bases these Initial Contentions on information presently known, publicly available, and accessible with reasonable diligence, as well as information and belief. Information regarding the physical structure and software operation of the identified applications and services comprises information purportedly proprietary and/or confidential to Netflix Inc., and which is not available to Affinity Labs. Affinity Labs contends that Netflix Inc. infringes U.S. Patent No. 9,444,868 by making, using, offering for sale, selling, or importing into the United States the Netflix on-demand Internet streaming media service, as implemented via the Netflix applications and web interfaces.¹

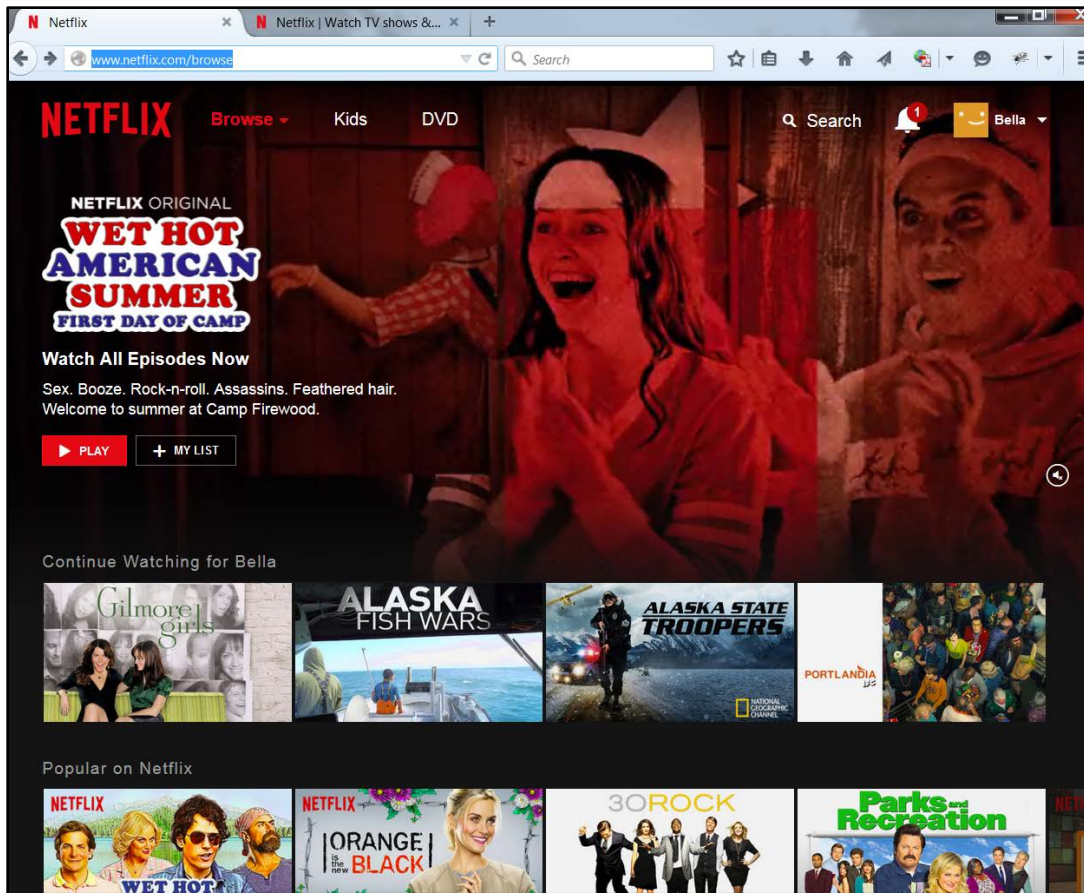
Claim 1

Cl. [1.pre]: A media system, comprising:

Netflix, by way of its streaming platform (directly or through agents, partners, or other third parties) makes, uses, and maintains a media system.² For instance, Netflix enables a user to choose a media for delivery from a menu of options, as shown below.

¹ Netflix is available on any Internet-connected device that offers a Netflix app, such as a computer, gaming console, DVD or Blu-ray player, HDTV, set-top box, home theater system, phone or tablet. *See Netflix Supported Devices*, https://devices.netflix.com/en_us/. Additionally, Netflix on-demand service is available on over 1400 different device/OS permutations. *See* <http://techblog.netflix.com/2015/06/nts-real-time-streaming-for-test.html>.

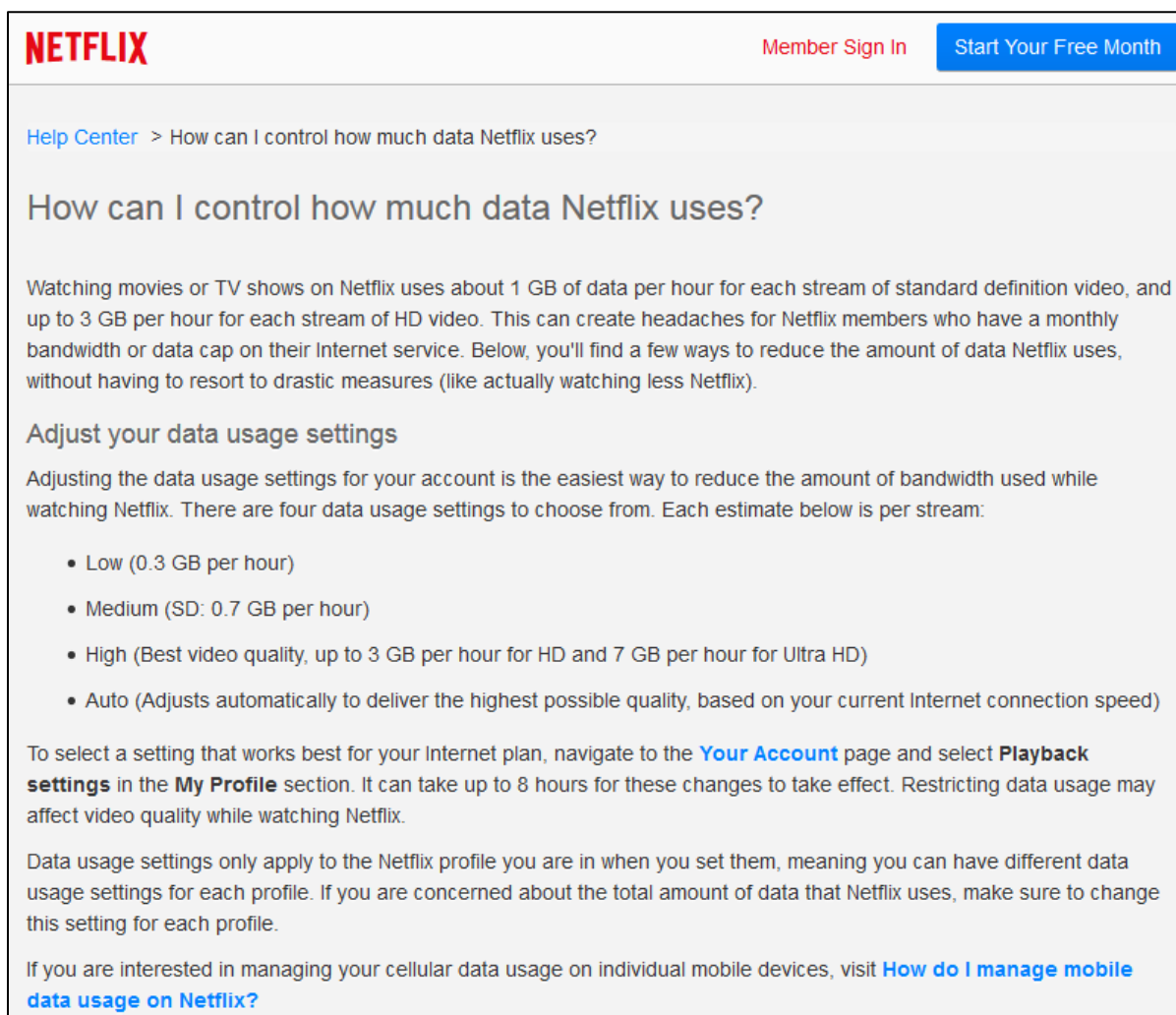
² *See, e.g., How does Netflix Work?*, <https://help.netflix.com/en/node/412?tnid=412>.



Cl. [1.a]: a plurality of independent segment files, wherein a given segment file of the plurality of independent segment files has a given format and a different segment of the plurality of independent segment files has a different format, further wherein the given format facilitates an outputting of information in the given segment file at a given rate that is different than a rate associated with the different format;

Netflix, by way of its streaming platform (directly or through agents, partners, or other third parties) makes, uses, and maintains a media system that includes a plurality of independent segment files, wherein a given segment file of the plurality of independent segment files has a given format and a different segment of the plurality of independent segment files has a different format, further wherein the given format facilitates an outputting of information in the given segment file at a given rate that is different than a rate associated with the different format. For example, Netflix maintains its streaming media

library for “watching movies or TV shows” at different video qualities or resolutions. The “Low” setting streams content at approximately 0.3 GB per hour, the “Medium” setting streams standard definition “SD” content at approximately 0.7 GB per hour, the “High” setting streams high definition “HD” content and ultra high definition “Ultra HD” content at approximately 3 to 7 GB per hour, and the “Auto” setting “[a]djusts automatically to deliver the highest possible quality, based on your current Internet connection speed.”³



The screenshot shows the Netflix website header with the logo on the left, "Member Sign In" in the center, and a blue button "Start Your Free Month" on the right. Below the header is a breadcrumb trail: "Help Center > How can I control how much data Netflix uses?". The main heading is "How can I control how much data Netflix uses?". The text explains that watching movies or TV shows on Netflix uses about 1 GB of data per hour for standard definition video, and up to 3 GB per hour for HD video. It lists four data usage settings: Low (0.3 GB per hour), Medium (SD: 0.7 GB per hour), High (Best video quality, up to 3 GB per hour for HD and 7 GB per hour for Ultra HD), and Auto (Adjusts automatically to deliver the highest possible quality, based on your current Internet connection speed). It also provides instructions on how to change these settings in the "Your Account" page and mentions that changes can take up to 8 hours to take effect. A link is provided for managing cellular data usage on mobile devices.

³ *How can I control how much data Netflix uses?*, Netflix, Inc., <https://help.netflix.com/en/node/87>; see also *How do I manage mobile data usage on Netflix?*, Netflix, Inc., <https://help.netflix.com/en/node/43701>.

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