

**Written Testimony of David Hyman
General Counsel of Netflix, Inc.**

Before a Hearing of

**The Committee on the Judiciary of the U.S. Senate
Subcommittee on Privacy, Technology, and the Law**

On

**“The Video Privacy Protection Act:
Protecting Viewer Privacy in the 21st Century”**

Tuesday, January 31, 2012

Chairman Franken, Ranking Member Coburn, and distinguished members of the Subcommittee. Thank you for the opportunity to testify today about the Video Privacy Protection Act.

My name is David Hyman. I have served as the General Counsel of Netflix since 2002: A time when streaming video over the Internet to a "smart" TV was more the stuff of a sci-fi mini-series than a topic of serious consideration in a corporate board room, much less a congressional hearing. How far we have come in such a short period of time. Today's hearing is a testament to the incredibly dynamic and powerful innovation engine of our Internet economy.

Netflix was founded in 1997 as a DVD-by-mail service. To many, the use of the Internet and the Netflix website was nothing more than a way to submit orders for physical disc delivery. But for Netflix, we saw an opportunity to use technology in a way that helped consumers discover movies and TV shows they would love, as well as provide business opportunities for content producers and distributors.

The popularity of our DVD-by-mail service grew rapidly. But with innovation deeply rooted in our corporate DNA, we continued to research and try new and compelling consumer offerings. We were an early pioneer in streaming movies & TV shows over the Internet to personal computers. In 2008, we began to deliver instant streaming video to televisions through the use of a handful of Internet-connected devices. Today, more than 21 million consumers in the United States use the Netflix streaming service on more than 700 different types of Internet-connected devices, including game consoles, mobile phones and tablets. And, in the last three months of 2011, we delivered more than 2 billion hours of streaming movies and TV shows to those consumers.

At the same time the Netflix streaming service has seen such uptake by consumers, the world of social media has exploded in popularity. Embodied by the growth of Facebook, the social Internet offers tremendous opportunities for consumers and businesses. Netflix believes that social media offers a powerful new way for consumers to enjoy and discover movies and TV shows they will love. To this end, we have been offering our members outside the United States the opportunity to share and discover movies with their friends through the Facebook platform. While it's still early in the innovation process, we have seen strong consumer interest in our social application, with more than half a million subscribers outside the United States connected with Facebook.

Unfortunately, we have elected not to offer our Facebook application in the United States because of ambiguities in the Video Privacy Protection Act. Under this law, it is unclear whether consumers can give ongoing consent to allow Netflix to share the movies and TV shows they've instantly watched through our service. The VPPA is an unusual law; unlike most federal privacy statutes, the VPPA could be read to prohibit consumers who have provided explicit opt-in consent from being able to authorize the disclosure on an ongoing basis of information they so desire to share. The friction that this ambiguity creates places a drag on social video innovation that is not present in any other medium, including music, books, and even news stories.

Recognizing this, the House recently passed a bi-partisan bill, H.R. 2471, that clarifies consumers' ability to elect to share movies and TV shows they've watched on an ongoing basis. H.R. 2471 leaves the opt-in standard for privacy within the VPPA undisturbed. Netflix supports an opt-in regime for movie title sharing and believes this approach is workable and consistent with our members' expectations and desires.

The VPPA singles out one type of data sharing. Instead of trying to graft specific notions about video privacy from almost 25 years ago into the dynamic information age of today, we would encourage a measured and holistic review of privacy for the 21st century, one designed to foster continued innovation while balancing the desires and privacy expectations of consumers. Such a review will understandably take considerable time and effort and we are ready to assist. In the interim, it is our hope that the Senate will see the value in clarifying the right of consumers to opt-in to ongoing sharing under the VPPA and quickly approve H.R. 2471.

Again, thank you for the opportunity to appear before you today, and I look forward to your questions.