NETFLIX INC

FORM 10-Q
(Quarterly Report)

Filed 05/08/09 for the Period Ending 03/31/09

Address	100 WINCHESTER CIRCLE . LOS GATOS, CA 95032
Telephone	408-540-3700
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Symbol	NFLX
SIC Code	7841 - Video Tape Rental
Industry	Recreational Activities
Sector	Services
Fiscal Year	12/31

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Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2009

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____to _____

Commission File Number: 000-49802

Netflix, Inc.
(Exact name of Registrant as specified in its charter)

Delaware **(State or other jurisdiction of incorporation or organization)**	**77-0467272** **(I.R.S. Employer Identification Number)**

100 Winchester Circle, Los Gatos, California 95032
(Address and zip code of principal executive offices)

(408) 540-3700
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒	Accelerated filer ☐
Non-accelerated filer ☐ (do not check if a smaller reporting company)	Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of April 30, 2009, there were 57,697,841 shares of the registrant's common stock, par value $0.001, outstanding.

Table of Contents

	Page
Part I. Financial Information	3
Item 1. Condensed Consolidated Financial Statements	3
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	14
Item 3. Quantitative and Qualitative Disclosures About Market Risk	22
Item 4. Controls and Procedures	23
Part II. Other Information	24
Item 1. Legal Proceedings	24
Item 1A. Risk Factors	24
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	24
Item 6. Exhibits	25
Signatures	26
Exhibit Index	27

PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

Index to Condensed Consolidated Financial Statements

	Page
Condensed Consolidated Statements of Operations for the Three Months Ended March 31, 2009 and 2008	4
Condensed Consolidated Balance Sheets as of March 31, 2009 and December 31, 2008	5
Condensed Consolidated Statements of Cash Flows for the Three Months Ended March 31, 2009 and 2008	6
Notes to Condensed Consolidated Financial Statements	7

Table of Contents

Netflix, Inc.

Condensed Consolidated Statements of Operations
(unaudited)
(in thousands, except per share data)

	Three Months Ended	
	March 31, 2009	March 31, 2008
Revenues	$394,098	$326,183
Cost of revenues:		
Subscription	215,299	187,156
Fulfillment expenses *	43,969	35,649
Total cost of revenues	259,268	222,805
Gross profit	134,830	103,378
Operating expenses:		
Technology and development *	24,200	20,267
Marketing *	62,242	54,895
General and administrative *	13,014	13,739
Gain on disposal of DVDs	(1,097)	(833)
Total operating expenses	98,359	88,068
Operating income	36,471	15,310
Other income (expense):		
Interest expense on lease financing obligations	(670)	(423)
Interest and other income (expense)	1,610	7,660
Income before income taxes	37,411	22,547
Provision for income taxes	15,048	9,203
Net income	$ 22,363	$ 13,344
Net income per share:		
Basic	$ 0.38	$ 0.21
Diluted	$ 0.37	$ 0.21
Weighted average common shares outstanding:		
Basic	58,734	62,776
Diluted	60,709	64,840
*** Stock-based compensation included in expense line items:**		
Fulfillment expenses	$ 120	$ 106
Technology and development	1,071	996
Marketing	443	509
General and administrative	1,498	1,519

See accompanying notes to the condensed consolidated financial statements.

Table of Contents

Netflix, Inc.

Condensed Consolidated Balance Sheets
(unaudited)
(in thousands, except share and par value data)

	As of March 31, 2009	As of December 31, 2008
Assets		
Current assets:		
Cash and cash equivalents	$ 115,131	$ 139,881
Short-term investments	171,358	157,390
Prepaid expenses	8,210	8,122
Prepaid revenue sharing expenses	13,957	18,417
Current content library, net	33,299	18,691
Deferred tax assets	5,542	5,617
Other current assets	17,383	13,329
Total current assets	364,880	361,447
Content library, net	105,361	98,547
Property and equipment, net	123,817	124,948
Deferred tax assets	23,107	22,409
Other assets	11,513	10,595
Total assets	$ 628,678	$ 617,946
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 112,767	$ 100,344
Accrued expenses	32,108	31,394
Current portion of lease financing obligations	1,215	1,152
Deferred revenue	80,623	83,127
Total current liabilities	226,713	216,017
Lease financing obligations, excluding current portion	37,656	37,988
Other liabilities	17,997	16,786
Total liabilities	282,366	270,791
Commitments and contingencies		
Stockholders' equity:		
Common stock, $0.001 par value; 160,000,000 shares authorized at March 31, 2009 and December 31, 2008; 58,495,014 and 58,862,478 issued and outstanding at March 31, 2009 and December 31, 2008, respectively	63	62
Additional paid-in capital	358,620	338,577
Treasury stock at cost (4,667,627 and 3,491,084 shares, at March 31, 2009 and December 31, 2008, respectively)	(142,739)	(100,020)
Accumulated other comprehensive (loss) income	(447)	84
Retained earnings	130,815	108,452
Total stockholders' equity	346,312	347,155
Total liabilities and stockholders' equity	$ 628,678	$ 617,946

See accompanying notes to the condensed consolidated financial statements.

Table of Contents

Netflix, Inc.

Condensed Consolidated Statements of Cash Flows
(unaudited)
(in thousands)

	Three Months Ended	
	March 31, 2009	March 31, 2008
Cash flows from operating activities:		
Net income	$ 22,363	$ 13,344
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization of property, equipment and intangibles	9,175	6,584
Amortization of content library	49,304	57,570
Amortization of discounts and premiums on investments	194	139
Stock-based compensation expense	3,132	3,130
Excess tax benefits from stock-based compensation	(3,684)	(820)
Loss on disposal of property and equipment	144	—
Gain on sale of short-term investments	(572)	(4,320)
Gain on disposal of DVDs	(2,033)	(2,592)
Deferred taxes	(623)	(859)
Changes in operating assets and liabilities:		
Prepaid expenses and other current assets	(391)	2,750
Content library	(22,091)	(23,412)
Accounts payable	8,572	8,680
Accrued expenses	4,331	7,827
Deferred revenue	(2,504)	(3,290)
Other assets and liabilities	316	(669)
Net cash provided by operating activities	65,633	64,062
Cash flows from investing activities:		
Purchases of short-term investments	(52,384)	(91,954)
Proceeds from sale of short-term investments	36,933	175,319
Proceeds from maturities of short-term investments	1,330	—
Purchases of property and equipment	(6,572)	(12,431)
Acquisition of intangible asset	(200)	—
Acquisitions of content library	(46,499)	(51,316)
Proceeds from sale of DVDs	2,726	4,507
Investment in business	—	(6,000)
Other assets	(2)	8
Net cash (used in) provided by investing activities	(64,668)	18,133
Cash flows from financing activities:		
Principal payments of lease financing obligations	(269)	(122)
Proceeds from issuance of common stock	13,589	8,542
Excess tax benefits from stock-based compensation	3,684	820
Repurchases of common stock	(42,719)	(99,885)
Net cash used in financing activities	(25,715)	(90,645)
Net decrease in cash and cash equivalents	(24,750)	(8,450)
Cash and cash equivalents, beginning of period	139,881	177,439
Cash and cash equivalents, end of period	$115,131	$168,989

See accompanying notes to the condensed consolidated financial statements.

Netflix, Inc.

Notes to Condensed Consolidated Financial Statements

1. Basis of Presentation and Summary of Significant Accounting Policies

The accompanying condensed consolidated interim financial statements of Netflix, Inc. and its wholly owned subsidiary (the "Company") have been prepared in conformity with accounting principles generally accepted in the United States ("U.S.") and are consistent in all material respects with those applied in the Company's Annual Report on Form 10-K for the year ended December 31, 2008. The preparation of condensed consolidated financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and judgments that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. Examples include the estimates of useful lives and residual value of the Company's content library, the valuation of stock-based compensation and the recognition and measurement of income tax assets and liabilities. The actual results experienced by the Company may differ from management's estimates.

The interim financial information is unaudited, but reflects all normal recurring adjustments that are, in the opinion of management, necessary to fairly present the information set forth herein. The interim financial statements should be read in conjunction with the audited financial statements and related notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Securities and Exchange Commission (the "SEC") on February 25, 2009. Interim results are not necessarily indicative of the results for a full year.

There have been no material changes in our significant accounting policies, as compared to the significant accounting policies described in the Company's Annual Report on Form 10-K for the year ended December 31, 2008.

Recent Accounting Pronouncements

In April 2009, the Financial Accounting Standards Board ("FASB") issued FASB Staff Positions ("FSP") No. FAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability has Significantly Decreased and Identifying Transactions That Are Not Orderly* , No. FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments* and No. FAS 107-1 and APB 28-1, *Interim Disclosures about Fair Value of Financial Instruments* . FSP FAS 157-4 provides additional guidance for estimating fair value in accordance with SFAS No. 157, *Fair Value Measurements* , when the volume and level of activity for the asset or liability have significantly decreased. FSP No. FAS 115-2 and FAS 124-2 modifies the requirements for recognizing other-than-temporary impairments of debt securities, changes the existing impairment model for those securities, and modifies the presentation and frequency of related disclosures. FSP No. FAS 107-1 and APB 28-1amends FAS No. 107, *Disclosures about Fair Value of Financial Instruments,* to require disclosures about fair value of financial instruments for interim reporting periods of publicly traded companies as well as in annual financial statements. This FSP also amends APB Opinion No. 28, *Interim Financial Reporting,* to require those disclosures in summarized financial information at interim reporting periods. These FSP's are effective for interim periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009. The Company does not expect the adoption of this standard to have a material effect on its financial position or results of operations.

Table of Contents

2. Net Income Per Share

Basic net income per share is computed using the weighted-average number of outstanding shares of common stock during the period. Diluted net income per share is computed using the weighted-average number of outstanding shares of common stock and, when dilutive, potential common shares outstanding during the period. Potential common shares consist primarily of incremental shares issuable upon the assumed exercise of stock options and shares currently purchasable pursuant to the Company's employee stock purchase plan using the treasury stock method. The computation of net income per share is as follows:

	Three months ended March 31,	
	2009	2008
	(in thousands, except per share data)	
Basic earnings per share:		
Net income	$22,363	$13,344
Shares used in computation:		
Weighted-average common shares outstanding	58,734	62,776
Basic earnings per share	$ 0.38	$ 0.21
Diluted earnings per share:		
Net income	$22,363	$13,344
Shares used in computation:		
Weighted-average common shares outstanding	58,734	62,776
Employee stock options and employee stock purchase plan shares	1,975	2,064
Weighted-average number of shares	60,709	64,840
Diluted earnings per share	$ 0.37	$ 0.21

Employee stock options with exercise prices greater than the average market price of the common stock were excluded from the diluted calculation as their inclusion would have been anti-dilutive. The following table summarizes the potential common shares excluded from the diluted calculation:

	Three months ended March 31,	
	2009	2008
	(in thousands)	
Employee stock options	85	616

Table of Contents

3. Short-Term Investments and Fair Value Measurement

Short-term investments are classified as available-for-sale securities and are reported at fair value as follows:

	March 31, 2009			
	Gross Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
	(in thousands)			
Corporate debt securities	$ 69,845	$ 666	$ (738)	$ 69,773
Government and agency securities	86,666	859	(42)	87,483
Asset and mortgage backed securities	15,294	119	(1,311)	14,102
	$171,805	$ 1,644	$ (2,091)	$171,358

	December 31, 2008			
	Gross Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
	(in thousands)			
Corporate debt securities	$ 45,482	$ 440	$ (727)	$ 45,195
Government and agency securities	92,378	1,812	(244)	93,946
Asset and mortgage backed securities	19,446	15	(1,212)	18,249
	$157,306	$ 2,267	$ (2,183)	$157,390

The Company measures certain financial assets at fair value on a recurring basis, including cash equivalents and available-for-sale securities. In accordance with SFAS No. 157, fair value is a market-based measurement that should be determined based on the assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, SFAS No. 157 establishes a three-level hierarchy which prioritizes the inputs used in measuring fair value. The three hierarchy levels are defined as follows:

Level 1—Valuations based on unadjusted quoted prices in active markets for identical assets. The fair value of available-for-sale securities included in the Level 1 category is based on quoted prices that are readily and regularly available in an active market. The Level 1 category includes money market funds of $51.4 million, which are included in cash and cash equivalents in the condensed consolidated balance sheets.

Level 2—Valuations based on observable inputs (other than Level 1 prices), such as quoted prices for similar assets at the measurement date; quoted prices in markets that are not active; or other inputs that are observable, either directly or indirectly. The fair value of available-for-sale securities included in the Level 2 category is based on the market values obtained from an independent pricing service that were evaluated using pricing models that vary by asset class and may incorporate available trade, bid and other market information and price quotes from well established independent pricing vendors and broker-dealers. The Level 2 category includes short-term investments and cash equivalents of $175.4 million, which are comprised of corporate debt securities, government and agency securities and asset and mortgage-backed securities.

Level 3—Valuations based on inputs that are unobservable and involve management judgment and the reporting entity's own assumptions about market participants and pricing. The Company has no material Level 3 financial assets measured at fair value on the condensed consolidated balance sheets as of March 31, 2009.

The hierarchy level assigned to each security in the Company's available-for-sale portfolio and cash equivalents is based on its assessment of the transparency and reliability of the inputs used in the valuation of such instrument at the measurement date. The Company did not have any material financial liabilities that were covered by SFAS No. 157 as of March 31, 2009.

Table of Contents

4. Balance Sheet Components

Content Library, Net

Content library and accumulated amortization are as follows:

	As of December 31,	
	March 31, 2009	2008
	(in thousands)	
Content library, gross	$ 660,566	$ 637,336
Less: Accumulated amortization	(521,906)	(520,098)
	138,660	117,238
Less: Current content library, net	33,299	18,691
Content library, net	$ 105,361	$ 98,547

Property and Equipment, Net

Property and equipment and accumulated depreciation are as follows:

		As of December 31,	
	Useful Life	March 31, 2009	2008
		(in thousands)	
Computer equipment	3 years	$ 47,981	$ 44,598
Other equipment	3-5 years	60,512	59,061
Computer software, including internal-use software	1-3 years	29,979	30,060
Furniture and fixtures	3 years	12,343	12,304
Building	30 years	40,681	40,681
Leasehold improvements	Over life of lease	34,985	33,124
Capital work-in-progress		4,960	3,958
Property and equipment, gross		231,441	223,786
Less: Accumulated depreciation		(107,624)	(98,838)
Property and equipment, net		$ 123,817	$ 124,948

5. Other Comprehensive Income

The Company reports comprehensive income or loss in accordance with the provisions of SFAS No. 130, *Reporting Comprehensive Income*, which establishes standards for reporting comprehensive income and its components in the financial statements. Other comprehensive income consists of unrealized gains and losses on available-for-sale securities, net of tax. The components of comprehensive income are as follows:

	Three months ended March 31,	
	2009	2008
	(in thousands)	
Net income	$22,363	$13,344
Other comprehensive income:		
Change in unrealized gain (loss) on available-for-sale securities, net of tax	(531)	(1,301)
Comprehensive income	$21,832	$12,043

6. Stockholders' Equity

Stock Repurchases

On January 26, 2009, the Company announced that its Board of Directors authorized a stock repurchase program for 2009. Under this program, the Company anticipates repurchasing up to $132 million during the second through fourth quarters of 2009. The timing and actual number of shares repurchased will depend on various factors including price, corporate and regulatory requirements, alternative investment opportunities and other market conditions. During the three months ended March 31, 2009, under this program, the Company repurchased 1,176,543 shares of common stock at an average price of approximately $36 per share for an aggregate amount of approximately $43 million. Shares repurchased under this program are held as treasury stock and accordingly repurchases were accounted for under the treasury method.

There were no unsettled share repurchases at March 31, 2009.

Stock-Based Compensation

A summary of option activity during the three months ended March 31, 2009 is as follows:

		Options Outstanding			
	Shares Available for Grant	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in Years)	Aggregate Intrinsic Value (in Thousands)
Balances as of December 31, 2008	3,192,515	5,365,016	$ 18.81		
Granted	(182,896)	182,896	33.33		
Exercised	—	(809,079)	16.80		
Canceled	302	(302)	32.79		
Balances as of March 31, 2009	3,009,921	4,738,531	19.72	6.43	109,947
Vested and exercisable at March 31, 2009		4,738,531	19.72	6.43	109,947

The aggregate intrinsic value in the table above represents the total pretax intrinsic value (the difference between the Company's closing stock price on the last trading day of the first quarter of 2009 and the exercise price, multiplied by the number of in-the-money options) that would have been received by the option holders had all option holders exercised their options on March 31, 2009. This amount changes based on the fair market value of the Company's common stock. Total intrinsic value of options exercised for the three months ended March 31, 2009 and 2008 was $16.4 million and $6.6 million, respectively.

Cash received from option exercises for the three months ended March 31, 2009 and 2008 was $13.6 million and $8.5 million, respectively.

The following table summarizes the assumptions used to value option grants using the lattice-binomial model:

	Three Months Ended March 31,	
	2009	2008
Dividend yield	0%	0%
Expected volatility	56%	54%
Risk-free interest rate	2.60%	3.86%
Suboptimal exercise factor	1.73-1.87	1.77-2.04

In the first quarter of 2009, the Company used a suboptimal exercise factor of 1.87 for executives and 1.73 for non-executives, which resulted in a calculated expected life of the option grants of four years for executives and three years for non-executives. In the first quarter of 2008, the Company used a suboptimal exercise factor of 2.04 for executives and 1.77 for non-executives, which resulted in a calculated expected life of four years for executives and three years for non-executives.

The weighted-average fair value of employee stock options granted during the three months ended March 31, 2009 and 2008 was $14.10 and $12.39 per share, respectively.

The following table summarizes stock-based compensation expense, net of tax, related to stock option plans and employee stock purchases under SFAS No. 123(R) for the three months ended March 31, 2009 and 2008 which was allocated as follows:

	Three Months Ended March 31,	
	2009	2008
	(in thousands)	
Fulfillment expense	$ 120	$ 106
Technology and development	1,071	996
Marketing	443	509
General and administrative	1,498	1,519
Stock-based compensation expense before income taxes	3,132	3,130
Income tax benefit	(1,259)	(1,277)
Total stock-based compensation after income taxes	$ 1,873	$ 1,853

7. Income Taxes

The provision is primarily for the U.S. federal and state taxes offset by the research and development credits claimed during the year. The Company's effective tax rate differed from the federal statutory rate primarily due to state tax provision offset by the research and development credits claimed. The provision for income taxes for the three months ended March 31, 2009 was $15.0 million. The effective tax rate for the three months ended March 31, 2009 and 2008 is 40.2% and 40.8%, respectively. The decrease in the effective tax rates for the three months ended March 31, 2009 as compared to the same prior-year period was primarily attributable to the impact of stock-based compensation adjustments.

During the periods presented, the tax benefit from an uncertain tax position may be recognized only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities. The determination is based on the technical merits of the position and presumes that each uncertain tax position will be examined by the relevant taxing authority that has full knowledge of all relevant information. Although the Company believes the estimates are reasonable, no assurance can be given that the final outcome of these matters will not be different than what is reflected in the historical income tax provisions and accruals. The Company's effective tax rate includes the impact of tax contingency reserves and changes to the reserves, including related interest, as considered appropriate by management. The Company classifies gross interest and penalties and unrecognized tax benefits that are not expected to result in payment or receipt of cash within one year as non-current liabilities in the condensed consolidated balance sheet. As of January 1, 2009, the Company had $10.9 million gross unrecognized tax benefits. During the three months ended March 31, 2009, the Company had an increase in gross unrecognized tax benefits of approximately $0.3 million. The gross uncertain tax positions, if recognized by the Company, will result in a reduction of approximately $9.0 million to the tax provision which will favorably impact the Company's effective tax rate. In accordance with FIN No. 48, the Company recognizes interest and penalties related to uncertain tax positions in income tax expense.

The Company anticipates settling $0.3 million of its unrecognized tax benefits over the next twelve months. As a result, this amount was included in the current income taxes payable.

The Company files income tax returns in the U.S. federal jurisdiction and various states. The Company is subject to U.S. federal or state income tax examinations by tax authorities for years after 1997. Due to the Company's loss position for tax purposes in prior years, all tax years are open to examination in the U.S and state jurisdictions. The Company is also open to examination in various state jurisdictions for tax years 2000 and forward, none of which are individually material.

8. Commitments and Contingencies

The Company accounts for streaming content in accordance with SFAS No. 63, *Financial Reporting by Broadcasters* , which requires classification of streaming content as either a current or non-current asset in the consolidated balance sheets based on the estimated time of usage after certain criteria have been met including availability of the streaming content for its first showing. The Company has $94.5 million of commitments at March 31, 2009 related to streaming content license agreements that have been executed but for which the streaming content does not meet the asset recognition criteria in SFAS 63.

Litigation

From time to time, in the normal course of its operations, the Company is a party to litigation matters and claims, including claims relating to employee relations and business practices. Litigation can be expensive and disruptive to normal business operations. Moreover, the results of complex legal proceedings are difficult to predict and we cannot reasonably estimate the likelihood or potential dollar amount of any adverse results. The Company expenses legal fees as incurred. Listed below are material legal proceedings to which the Company is a party. An unfavorable outcome of any of these matters could have a material adverse effect on the Company's financial position, liquidity or results of operations.

On April 1, 2009, Jay Nunez, individually and on behalf of others similarly situated in California, filed a purported class action lawsuit against the Company in California Superior Court, County of Orange. The complaint asserts claims of unlawful, unfair and deceptive business practices and violation of the California Consumer Legal Remedies Act relating to certain of the Company's marketing statements. The complaint seeks restitution, injunction and other relief. The Company has not responded to the complaint.

In January and February 2009, a number of purported anti-trust class action suits were filed against the Company. Wal-Mart Stores, Inc. and Walmart.com USA LLC (collectively, Wal-Mart) were also named as defendants in these suits. Most of the suits were filed in the United States District Court for the Northern District of California and other federal district courts around the country. A number of suits were filed in the Superior Court of the State of California, Santa Clara County. The plaintiffs, who are current or former Netflix customers, generally allege that Netflix and Wal-Mart entered into an agreement to divide the markets for sales and online rentals of DVDs in the United States, which resulted in higher Netflix subscription prices. The complaints, which assert violation of federal and/or state antitrust laws, seek injunctive relief, costs (including attorneys' fees) and damages in an unspecified amount. On January 16, 2009, plaintiffs from one of the Northern District of California actions filed a motion before the Judicial Panel on Multidistrict Litigation to have all cases that have been filed in federal court coordinated or consolidated for pre-trial purposes in the Northern District of California. On April 10, 2009, the Judicial Panel on Multidistrict Litigation ordered all cases pending in federal court transferred to the Northern District of California to be consolidated or coordinated for pre-trial purposes. The Company has not responded to the complaints.

On December 26, 2008, Quito Enterprises, LLC filed a complaint for patent infringement against the Company in the United States District Court for the Southern District of Florida, captioned *Quito Enterprises, LLC v. Netflix, Inc., et. al*, Civil Action No. 1:08-cv-23543-AJ. The complaint alleges that the Company infringed U.S. Patent No. 5,890,152 entitled "Personal Feedback Browser for Obtaining Media Files" issued on March 30, 1999. The complaint seeks unspecified damages, interest, and seeks to permanently enjoin the Company from infringing the patent in the future.

On October 24, 2008, Media Queue, LLC filed a complaint for patent infringement against the Company in the United States District Court for the Eastern District of Oklahoma, captioned *Media Queue, LLC v. Netflix, Inc., et. al* , Civil Action No. CIV 08-402-KEW. The complaint alleges that the Company infringed U.S. Patent No. 7,389,243 entitled "Notification System and Method for Media Queue" issued on June 17, 2008. The complaint seeks unspecified compensatory and enhanced damages, interest and fees, and seeks to permanently enjoin the Company from infringing the patent in the future. On February 24, 2009, the case was transferred to the Northern District of California.

On August 27, 2007, plaintiff/relator Norman Baccash, on behalf of the United States, filed suit against the Company in the United States District Court for the Northern District of Georgia, alleging claims under the False Claims Act, 31 U.S.C. § 3729 et seq. (the "Act"). The complaint was filed under seal, pursuant to the Act, to provide the United States an opportunity to intervene and conduct the action on its own. On June 26, 2008, the United States declined to intervene in the litigation and the complaint was ordered unsealed on July 11, 2008. The complaint alleges that the Company falsely certified that its DVD mailers qualified as machinable under the mailing standards of the United States Postal Service, thereby avoiding $260 million in surcharges for nonmachinable mail. The complaint seeks monetary relief in amount three times the damages suffered by the United States, civil penalties of between $5,500 and $11,000 for each violation of the Act, a monetary award for the relator pursuant to the Act, injunctive relief and costs. On February 2, 2009, the Company filed a motion to dismiss the complaint. On April 9, 2009, the parties stipulated to dismiss the Action against Netflix with prejudice as to Relator and without prejudice as to the United States of America after Relator decided to no longer pursue the Action. On April 10, 2009, the Court entered an Order dismissing the case pursuant to the stipulation.

On December 28, 2007, Parallel Networks, LLC filed a complaint for patent infringement against the Company in the United States District Court for the Eastern District of Texas, captioned *Parallel Networks, LLC v. Netflix, Inc., et. al* , Civil Action No 2:07-cv-562-LED. The complaint alleges that the Company infringed U.S. Patent Nos. 5,894,554 and 6,415,335 B1 entitled "System For Managing Dynamic Web Page Generation Requests by Intercepting Request at Web Server and Routing to Page Server Thereby Releasing Web Server to Process Other Requests" and "System and Method for Managing Dynamic Web Page Generation Requests", issued on April 13, 1999 and July 2, 2002, respectively. The complaint seeks unspecified compensatory and enhanced damages, interest and fees, and seeks to permanently enjoin the Company from infringing the patent in the future.

On January 3, 2007, Lycos, Inc. filed a complaint for patent infringement against the Company, TiVo, Inc. and Blockbuster, Inc. in the United States District Court for the Eastern District of Virginia. The complaint alleges that the Company infringed U.S. Patents Nos. 5,867,799 and 5,983,214, entitled "Information System and Method for Filtering a Massive Flow of Information Entities to Meet User Information Classification Needs" and "System and Method Employing Individual User Content-Based Data and User Collaboration Feedback Data to Evaluate the Content of an Information Entity in a Large Information Communication Network", respectively. The complaint seeks unspecified compensatory and enhanced damages, interest and fees and seeks to permanently enjoin the defendants from infringing the patents in the future. On August 6, 2007, the case was transferred to the District of Massachusetts. On June 27, 2008, TiVo, Inc. was dismissed from the litigation pursuant to a stipulation with the plaintiff. On November 21, 2008, the Company filed a motion for summary judgment of non-infringement based on limited issues. The motion is scheduled to be heard on June 15, 2009.

Indemnifications

In the ordinary course of business, the Company enters into contractual arrangements under which it has agreed to provide indemnification of varying scope and terms to business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of the Company's breach of such agreements and out of intellectual property infringement claims made by third parties. In these circumstances, payment may be conditional on the other party making a claim pursuant to the procedures specified in the particular contract. Further, the Company's obligations under these agreements may be limited in terms of time and/or amount, and, in some instances, the Company may have recourse against third parties for certain payments. In addition, the Company has entered into indemnification agreements with its directors and certain of its officers that will require it, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers. The terms of such obligations vary.

It is not possible to make a reasonable estimate of the maximum potential amount of future payments under these or similar agreements due to the conditional nature of the Company's obligations and the unique facts and circumstances involved in each particular agreement. No amount has been accrued in the accompanying condensed consolidated financial statements with respect to these indemnification obligations.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains certain forward-looking statements within the meaning of the federal securities laws. These forward-looking statements include, but are not limited to: statements regarding the breadth of content choices available to us, our competitive advantage, the continued popularity of the DVD format, expectations on the growth of Internet delivery of content, and our liquidity. These forward-looking statements are subject to risks and uncertainties that could cause actual results and events to differ. Factors that might cause or contribute to such differences include, but are not limited to, those discussed in the Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Securities and Exchange Commission on February 25, 2009 and the other Quarterly Reports on Form 10-Q to be filed by us in 2009.

We assume no obligation to revise or publicly release any revision to any forward-looking statements contained in this Quarterly Report on Form 10-Q.

Overview

Our Business

With more than 10 million subscribers, we are the largest online movie rental subscription service in the United States. We offer a variety of subscription plans, with no due dates, no late fees, no shipping fees and no pay-per-view fees. We provide subscribers access to over 100,000 DVD and Blu-ray titles plus more than 12,000 streaming content choices. Subscribers select titles at our Web site aided by our proprietary recommendation service and merchandising tools. Subscribers can:

- Receive DVDs by U.S. mail and return them to us at their convenience using our prepaid mailers. After a DVD has been returned, we mail the next available DVD in a subscriber's queue.
- Watch streaming content without commercial interruption on personal computers ("PCs"), Intel-based Macintosh computers ("Macs") and televisions ("TVs"). The viewing experience is enabled by Netflix controlled software that can run on a variety of devices. These devices include PCs, Macs, Internet connected Blu-ray players, such as those manufactured by LG Electronics and Samsung, set-top boxes, such as TiVo and the Roku Player, game consoles, such as Microsoft's Xbox 360, and planned for later this year, TVs from Vizio and LG Electronics.

Our core strategy is to grow a large subscription business consisting of DVD by mail and streaming content. We offer over 100,000 titles on DVD. In comparison, the 12,000 content choices available for streaming are relatively limited. We expect to substantially broaden the content choices as more content becomes available to us. Until such time, by bundling DVD and streaming as part of the Netflix subscription, we are able to offer subscribers a uniquely comprehensive selection of movies

for one low monthly price. We believe this creates a competitive advantage as compared to a streaming only subscription service. This advantage will diminish over time as more content becomes available over the Internet from competing services, by which time we expect to have further developed our other advantages such as brand, distribution, and our proprietary merchandising platform. Despite the growing popularity of Internet delivered content, we expect that standard definition DVD, along with its high definition successor, Blu-ray (collectively referred to in this Quarterly Report as "DVD"), will continue to be the primary means by which most Netflix subscribers view content for the foreseeable future. However, at some point in the future, we expect that Internet delivery of content directly to the home will surpass DVD.

Key Business Metrics

Management periodically reviews certain key business metrics within the context of our articulated performance goals in order to evaluate the effectiveness of our operational strategies, allocate resources and maximize the financial performance of our business. The key business metrics include the following:

- *Churn:* Churn is a monthly measure defined as customer cancellations in the quarter divided by the sum of beginning subscribers and gross subscriber additions, then divided by three months. Management reviews this metric to evaluate whether we are retaining our existing subscribers in accordance with our business plans.
- *Subscriber Acquisition Cost:* Subscriber acquisition cost is defined as total marketing expense divided by total gross subscriber additions. Management reviews this metric to evaluate how effective our marketing programs are in acquiring new subscribers on an economical basis in the context of estimated subscriber lifetime value.
- *Gross Margin:* Management reviews gross margin to monitor variable costs and operating efficiency.

Management believes it is useful to monitor these metrics together and not individually as management does not make business decisions based upon any single metric. Please see "Results of Operations" below for further discussion on these key business metrics.

Performance Highlights

The following represents our performance highlights for the three months ended March 31, 2009, December 31, 2008 and March 31, 2008:

	Three Months Ended		
	March 31, 2009	December 31, 2008	March 31, 2008
	(in thousands , except per share data, percentages and subscriber acquisition cost)		
Revenues	$394,098	$ 359,595	$326,183
Net income	22,363	22,732	13,344
Net income per share—diluted	$ 0.37	$ 0.38	$ 0.21
Total subscribers at end of period	10,310	9,390	8,243
Churn	4.2%	4.2%	3.9%
Subscriber acquisition cost	$ 25.79	$ 26.67	$ 29.48
Gross margin	34.2%	35.2%	31.7%

Critical Accounting Policies and Estimates

There have been no significant changes during the three months ended March 31, 2009 to the items that we disclosed as our critical accounting policies and estimates in Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the year ended December 31, 2008.

Results of Operations

The following table sets forth, for the periods presented, the line items in our condensed consolidated statements of operations as a percentage of total revenues. The information contained in the table below should be read in conjunction with the condensed consolidated financial statements, notes to the condensed consolidated financial statements and Management's Discussion and Analysis of Financial Condition and Results of Operations included in this Quarterly Report on Form 10-Q.

Table of Contents

	Three Months Ended		
	March 31, 2009	December 31, 2008	March 31, 2008
Revenues	100.0%	100.0%	100.0%
Cost of revenues:			
Subscription	54.6%	53.9%	57.4%
Fulfillment expenses	11.2%	10.9%	10.9%
Total cost of revenues	65.8%	64.8%	68.3%
Gross profit	34.2%	35.2%	31.7%
Operating expenses:			
Technology and development	6.1%	6.7%	6.2%
Marketing	15.8%	15.5%	16.8%
General and administrative	3.3%	3.0%	4.2%
Gain on disposal of DVDs	(0.2)%	(0.5)%	(0.2)%
Total operating expenses	25.0%	24.7%	27.0%
Operating income	9.2%	10.5%	4.7%
Other income (expense):			
Interest expense on lease financing obligations	(0.2)%	(0.2)%	(0.1)%
Interest and other income (expense)	0.5%	0.3%	2.3%
Income before income taxes	9.5%	10.6%	6.9%
Provision for income taxes	3.8%	4.3%	2.8%
Net income	5.7%	6.3%	4.1%

Revenues

	Three Months Ended			Change	
	March 31, 2009	December 31, 2008	March 31, 2008	Q1'09 vs. Q1'08	Q1'09 vs. Q4'08
	(in thousands except percentages and average monthly revenue per paying subscriber)				
Revenues	$394,098	$ 359,595	$326,183	20.8%	9.6%
Other data:					
Average number of paying subscribers	9,640	8,827	7,714	25.0%	9.2%
Average monthly revenue per paying subscriber	$ 13.63	$ 13.58	$ 14.09	(3.3)%	0.4%

We currently generate all of our revenues in the United States. We derive substantially all of our revenues from monthly subscription fees and recognize subscription revenues ratably over each subscriber's monthly subscription period. We record refunds to subscribers as a reduction of revenues.

Three months ended March 31, 2009 as compared to the three months ended March 31, 2008

The increase in our revenues during the three months ended March 31, 2009 as compared to the same prior-year period was primarily a result of the substantial growth in the average number of paying subscribers. This increase was partly offset by a decline in the average monthly revenue per paying subscriber, resulting from the growing popularity of our lower priced subscription plans.

Three months ended March 31, 2009 as compared to the three months ended December 31, 2008

The increase in our revenues during the three months ended March 31, 2009 as compared to the three months ended December 31, 2008 was primarily a result of the growth in the average number of paying subscribers.

The following table presents our ending subscriber information:

	As of		
	March 31, 2009	December 31, 2008	March 31, 2008
	(in thousands, except percentages)		
Free subscribers	194	226	141
As a percentage of total subscribers	1.9%	2.4%	1.7%
Paid subscribers	10,116	9,164	8,102
As a percentage of total subscribers	98.1%	97.6%	98.3%
Total subscribers	10,310	9,390	8,243

Cost of Revenues

Subscription

	Three Months Ended			Change	
	March 31, 2009	December 31, 2008	March 31, 2008	Q1'09 vs. Q1'08	Q1'09 vs. Q4'08
	(in thousands, except percentages)				
Subscription	$215,299	$193,635	$187,156	15.0%	11.2%
As a percentage of revenues	54.6%	53.9%	57.4%		

Three months ended March 31, 2009 as compared to the three months ended March 31, 2008

The increase in cost of subscription revenues for the three months ended March 31, 2009 as compared to the same prior-year period was primarily attributable to the following factors:

- The number of DVDs mailed to paying subscribers increased 17%, which was driven by a 25% increase in the number of average paying subscribers, partially offset by a decline in monthly DVD rentals per average paying subscriber attributed to the growing popularity of our lower priced plans.
- Postage and packaging expenses increased by 20%. This was primarily attributable to an increase in the number of DVDs mailed to paying subscribers and to an increase in the rates of first class postage in May 2008.
- Content expenses increased by 10%. This increase was primarily attributable to increased investments in streaming content.

Three months ended March 31, 2009 as compared to the three months ended December 31, 2008

The increase in cost of subscription revenues for the three months ended March 31, 2009 as compared to the three months ended December 31, 2008 was primarily attributable to the following factors:

- The number of DVDs mailed to paying subscribers increased 16%, which was driven by a 9% increase in the number of average paying subscribers and an increase in monthly DVD rentals per average paying subscriber attributed to a seasonal increase in disc usage.
- Postage and packaging expenses increased by 16%. This increase was primarily attributable to an increase in the number of DVDs mailed to paying subscribers and the monthly DVD rentals per average paying subscriber due to a seasonal increase in disc usage.
- Content expenses increased by 6%. This increase was primarily attributable to a seasonal increase in content acquisitions.

Table of Contents

Fulfillment Expenses

	Three Months Ended			Change	
	March 31, 2009	December 31, 2008	March 31, 2008	Q1'09 vs. Q1'08	Q1'09 vs. Q4'08
	(in thousands, except percentages)				
Fulfillment expenses	$43,969	$ 39,211	$35,649	23.3%	12.1%
As a percentage of revenues	11.2%	10.9%	10.9%		

Three months ended March 31, 2009 as compared to the three months ended March 31, 2008

The increase in fulfillment expenses for the three months ended March 31, 2009 as compared to the same prior-year period was primarily attributable to an increase in personnel-related costs resulting from the higher volume of activities in our shipping centers and customer service location, coupled with higher credit card fees as a result of the growth in the average number of paying subscribers. In addition, the increase in fulfillment expenses was attributable to an increase in facility-related costs resulting from the addition of new shipping centers and the relocation of our central receiving and storage center.

Three months ended March 31, 2009 as compared to the three months ended December 31, 2008

The increase in fulfillment expenses for the three months ended March 31, 2009 as compared to the three months ended December 31, 2008 was primarily attributable to an increase in personnel-related costs resulting from the higher volume of activities in our shipping centers due to a seasonal increase in disc usage. In addition, the increase in fulfillment expenses was attributable to an increase in facility-related costs resulting from the relocation of our central receiving and storage center.

Gross Margin

	Three Months Ended		
	March 31, 2009	December 31, 2008	March 31, 2008
	(in thousands, except percentages)		
Gross profit	$134,830	$ 126,749	$103,378
Gross margin	34.2%	35.2%	31.7%

Three months ended March 31, 2009 as compared to the three months ended March 31, 2008

The increase in gross margin for the three months ended March 31, 2009 as compared to the same prior-year period was primarily attributable to the popularity of our lower priced plans, which have higher gross margins. In addition, our margins continue to benefit from increased utilization of catalog titles resulting from ongoing improvements in our merchandising and recommendation systems.

Three months ended March 31, 2009 as compared to the three months ended December 31, 2008

The decrease in gross margin for the three months ended March 31, 2009 as compared to the three months ended December 31, 2008 was primarily attributable to an increase in postage and packaging expenses resulting from an increase in monthly DVD rentals per average paying subscriber due to a seasonal increase in disc usage.

Technology and Development

	Three Months Ended			Change	
	March 31, 2009	December 31, 2008	March 31, 2008	Q1'09 vs. Q1'08	Q1'09 vs. Q4'08
	(in thousands, except percentages)				
Technology and development	$24,200	$ 24,052	$20,267	19.4%	0.6%
As a percentage of revenues	6.1%	6.7%	6.2%		

Three months ended March 31, 2009 as compared to the three months ended March 31, 2008

The increase in technology and development expenses for the three months ended March 31, 2009 as compared to the same prior-year period was primarily attributable to an increase in personnel-related costs due to growth in headcount and expenses related to the development of solutions for streaming content and continued improvements in our service.

Three months ended March 31, 2009 as compared to the three months ended December 31, 2008

Technology and development expenses during the three months ended March 31, 2009 as compared to the three months ended December 31, 2008 were relatively flat.

Marketing

	Three Months Ended			Change	
	March 31, 2009	December 31, 2008	March 31, 2008	Q1'09 vs. Q1'08	Q1'09 vs. Q4'08
	(in thousands, except percentages and subscriber acquisition cost)				
Marketing	$62,242	$ 55,617	$54,895	13.4%	11.9%
As a percentage of revenues	15.8%	15.5%	16.8%		
Other data:					
Gross subscriber additions	2,413	2,085	1,862	29.6%	15.7%
Subscriber acquisition cost	$ 25.79	$ 26.67	$ 29.48	(12.5)%	(3.3)%

Three months ended March 31, 2009 as compared to the three months ended March 31, 2008

The increase in marketing expenses for the three months ended March 31, 2009 as compared to the same prior-year period was primarily attributable to an increase in marketing program spending, primarily in consumer electronic partner programs and online advertising. Subscriber acquisition cost decreased for the three months ended March 31, 2009 as compared to the same prior-year period primarily due to strong performance in all marketing channels coupled with strong organic subscriber growth.

Three months ended March 31, 2009 as compared to the three months ended December 31, 2008

The increase in marketing expenses during the three months ended March 31, 2009 as compared to the three months ended December 31, 2008 was primarily attributable to an increase in marketing program spending, primarily in online advertising. Subscriber acquisition cost decreased for the three months ended March 31, 2009 as compared to the three months ended December 31, 2008 primarily due to strong performance in all marketing channels coupled with strong organic subscriber growth.

Table of Contents

General and Administrative

	Three Months Ended			Change	
	March 31, 2009	December 31, 2008	March 31, 2008	Q1'09 vs. Q1'08	Q1'09 vs. Q4'08
	(in thousands, except percentages)				
General and administrative	$13,014	$ 10,762	$13,739	(5.3)%	20.9%
As a percentage of revenues	3.3%	3.0%	4.2%		

Three months ended March 31, 2009 as compared to the three months ended March 31, 2008

The decrease in general and administrative expenses for the three months ended March 31, 2009 as compared to the same prior-year period was primarily attributable to a decrease in personnel-related costs due to a decrease in headcount offset by an increase in costs related to legal proceedings.

Three months ended March 31, 2009 as compared to the three months ended December 31, 2008

The increase in general and administrative expenses during the three months ended March 31, 2009 as compared to the three months ended December 31, 2008 was primarily attributable to an increase in costs related to legal proceedings.

Interest and Other Income (Expense)

	Three Months Ended			Change	
	March 31, 2009	December 31, 2008	March 31, 2008	Q1'09 vs. Q1'08	Q1'09 vs. Q4'08
	(in thousands, except percentages)				
Interest and other income (expense)	$ 1,610	$ 852	$ 7,660	(79.0)%	89.0%
As a percentage of revenues	0.5%	0.3%	2.3%		

Three months ended March 31, 2009 as compared to the three months ended March 31, 2008

The decrease in interest and other income (expense) for the three months ended March 31, 2009 as compared with the same prior-year period was primarily attributable to gains realized from the sale of short-term investments and higher interest and dividends in the first quarter of 2008.

Three months ended March 31, 2009 as compared to the three months ended December 31, 2008

The increase in interest and other income (expense) during the three months ended March 31, 2009 as compared to the three months ended December 31, 2008 was primarily attributable to gains realized from the sale of short-term investments in the first quarter of 2009.

Income Taxes

	Three Months Ended		
	March 31, 2009	December 31, 2008	March 31, 2008
	(in thousands, except percentages)		
Provision for income taxes	$15,048	$ 15,364	$ 9,203
Effective tax rate	40.2%	40.3%	40.8%

Our effective tax rate for the first quarter of 2009 was 40.2% and differed from the federal statutory rate due primarily to state taxes offset by the Federal and California R&D tax credit recorded during the quarter. The decrease in our effective tax rate for the three months ended March 31, 2009 as compared to the same prior-year period was primarily attributable to the impact of stock-based compensation adjustments. The effective tax rate for the three months ended March 31, 2009 differed from the effective tax rate for the period ended December 31, 2008 due to a discrete tax benefit recorded for Federal and State tax credits.

Liquidity and Capital Resources

We have generated net cash from operations during each quarter since the second quarter of 2001. Many factors will impact our ability to continue to generate and grow cash from our operations including, but not limited to, the number of subscribers who sign up for our service and the growth or reduction in our subscriber base. In addition, we may have or otherwise choose to lower our prices and increase our marketing expenses in order to grow faster or respond to competition. Although we currently anticipate that cash flows from operations, together with our available funds, will be sufficient to meet our cash needs for the foreseeable future, we may require or choose to obtain additional financing. Our ability to obtain financing will depend on, among other things, our development efforts, business plans, operating performance and the condition of the capital markets at the time we seek financing.

Our primary source of liquidity has been cash from operations, which consists mainly of net income adjusted for non-cash items such as amortization of our content library, depreciation of property and equipment and stock-based compensation related to the issuance of common stock. Our primary uses of cash include our stock repurchase programs, postage and packaging expenses, the acquisition of content, capital expenditures related to information technology and automation equipment for operations, marketing and fulfillment expenses.

In 2009, operating cash flows is expected to be a significant source of liquidity, while postage and packaging expenses, acquisition of content, marketing and fulfillment expenses are expected to continue to be significant uses of cash. In addition, on January 26, 2009, we announced that our Board of Directors authorized a stock repurchase program allowing us to repurchase our common stock through the end of 2009. Under this program, the Company anticipates repurchasing up to $132 million during the second through fourth quarters of 2009. The timing and actual number of shares repurchased will depend on various factors, including price, corporate and regulatory requirements, alternative investment opportunities and other market conditions. The following table highlights selected measures of our liquidity and capital resources as of March 31, 2009 and 2008:

	Three Months Ended	
	March 31, 2009	March 31, 2008
Net cash provided by operating activities	$ 65,633	$ 64,062
Net cash (used in) provided by investing activities	(64,668)	18,133
Net cash used in financing activities	(25,715)	(90,645)

Operating Activities

Our operating activities consisted of net income of $22.4 million, increased by non-cash adjustments of $55.0 million offset by a decrease in net changes in operating assets and liabilities of $11.8 million. The majority of the non-cash adjustments resulted from amortization of the content library of $49.3 million as we continue to purchase additional titles in order to support our larger subscriber base. The net changes in operating assets and liabilities were mainly driven by acquisitions of streaming content, as we continued to increase our investments in streaming content in 2009. Cash provided by operating activities increased $1.6 million for the three months ended March 31, 2009 as compared to the same prior-year period. This was primarily due to an increase in net income of $9.1 million, offset by a decrease in non-cash adjustments of $3.8 million and a decrease in net changes in operating assets and liabilities of $3.7 million.

Investing Activities

Our investing activities consisted primarily of purchases and sales of available-for-sale securities, acquisitions of DVD content and purchases of property and equipment. Cash used in investing activities increased $82.8 million for the three months ended March 31, 2009 as compared to the same prior-year period. This is primarily attributable to a decrease of $137.1 million in the proceeds from the sales and maturities of available-for-sale securities offset by a decrease in the purchases of available-for-sale securities of $39.6 million as compared to the same prior-year period.

Financing Activities

Our financing activities consisted primarily of the issuance of common stock and repurchases of our common stock. Cash used in financing activities decreased by $64.9 million for the three months ended March 31, 2009 as compared to the same prior-year period primarily due to a decrease in stock repurchases of $57.2 million coupled with an increase in the proceeds from the issuance of common stock of $5.0 million.

Contractual Obligations

Off-Balance Sheet Arrangements

As part of our ongoing business, we do not engage in transactions that generate relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities. Accordingly, our operating results, financial condition and cash flows are not subject to off-balance sheet risks.

Operating Leases

We have entered into various non-cancelable operating lease agreements for our offices and distribution centers throughout the U.S. with original lease periods expiring through 2016. Certain of these leases have free or escalating rent payment provisions. We recognize rent expense on our operating leases on a straight-line basis at the commencement of the lease.

Indemnifications

In the ordinary course of business, we enter into contractual arrangements under which we agree to provide indemnification of varying scope and terms to business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of our breach of such agreements and out of intellectual property infringement claims made by third parties. In these circumstances, payment may be conditional on the other party making a claim pursuant to the procedures specified in the particular contract. Further, our obligations under these agreements may be limited in terms of time and/or amount, and, in some instances, we may have recourse against third parties for certain payments. In addition, we have entered into indemnification agreements with our directors and certain of our officers that will require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers. The terms of such obligations vary.

It is not possible to make a reasonable estimate of the maximum potential amount of future payments under these or similar agreements due to the conditional nature of our obligations and the unique facts and circumstances involved in each particular agreement. No amount has been accrued in the accompanying condensed consolidated financial statements with respect to these indemnification obligations.

Recent Accounting Pronouncements

In April 2009, the FASB issued FASB Staff Positions (“FSP”) No. FAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability has Significantly Decreased and Identifying Transactions That Are Not Orderly* , No. FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments* and No. FAS 107-1 and APB 28-1, *Interim Disclosures about Fair Value of Financial Instruments* . FSP FAS 157-4 provides additional guidance for estimating fair value in accordance with SFAS No. 157, *Fair Value Measurements* , when the volume and level of activity for the asset or liability have significantly decreased. FSP FAS 115-2 and FAS 124-2 modifies the requirements for recognizing other-than-temporary impairments of debt securities, changes the existing impairment model for those securities, and modifies the presentation and frequency of related disclosures. FSP FAS 107-1 and APB 28-1amends FAS No. 107, *Disclosures about Fair Value of Financial Instruments,* to require disclosures about fair value of financial instruments for interim reporting periods of publicly traded companies as well as in annual financial statements. This FSP also amends APB Opinion No. 28, *Interim Financial Reporting,* to require those disclosures in summarized financial information at interim reporting periods. These FSP’s are effective for interim periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009. We do not expect the adoption of this standard to have a material effect on our financial position or results of operations.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

For financial market risks related to changes in interest rates, reference is made to Item 7A “Quantitative and Qualitative Disclosures About Market Risk” contained in Part II of our Annual Report on Form 10-K for the year ended December 31, 2008. We started an investment portfolio during the first quarter of 2007 which is comprised of corporate debt securities, government and agency securities and asset and mortgage-backed securities. However, our exposure to market risk has not changed significantly since December 31, 2008.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q were effective in providing reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act of 1934, as amended, is (i) recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and (ii) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within Netflix have been detected.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the quarter ended March 31, 2009 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

The information set forth under Note 8 in the notes to the condensed consolidated financial statements is incorporated herein by reference.

Item 1A. Risk Factors

There have been no material changes from risk factors as previously disclosed under the heading "Risk Factors" in the Company's Annual Report on Form 10-K for the year ended December 31, 2008.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Stock repurchases during the three months ended March 31, 2009 were as follows:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Programs	Maximum Dollar Value that May Yet Be Purchased Under the Program (1)
January 1, 2009 - January 31, 2009	—	$ —	—	$ —
February 1, 2009 - February 28, 2009	879,737	36.45	879,737	142,936,055
March 1, 2009 - March 31, 2009	296,806	35.90	296,806	132,281,188
Total	1,176,543	$ 36.31	1,176,543	$ 132,281,188

(1) On January 26, 2009, the Company announced that its Board of Directors authorized a stock repurchase program for 2009. Based on the Board's authorization, the Company anticipates repurchasing up to $132 million during the second through fourth quarters of 2009. The timing and actual number of shares repurchased will depend on various factors including price, corporate and regulatory requirements, alternative investment opportunities and other market conditions.

Table of Contents

Item 6. Exhibits

(a) Exhibits:

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No	Exhibit	Filing Date	
3.1	Amended and Restated Certificate of Incorporation	10-Q	000-49802	3.1	August 2, 2004	
3.2	Amended and Restated Bylaws	8-K	000-49802	3.1	March 20, 2009	
3.3	Certificate of Amendment to the Amended and Restated Certificate of Incorporation	10-Q	000-49802	3.3	August 2, 2004	
4.1	Form of Common Stock Certificate	S-1/A	333-83878	4.1	April 16, 2002	
10.1†	Form of Indemnification Agreement entered into by the registrant with each of its executive officers and directors	S-1/A	333-83878	10.1	March 20, 2002	
10.2†	2002 Employee Stock Purchase Plan	10-Q	000-49802	10.16	August 9, 2006	
10.3†	Amended and Restated 1997 Stock Plan	S-1/A	333-83878	10.3	May 16, 2002	
10.4†	Amended and Restated 2002 Stock Plan	Def 14A	000-49802	A	March 31, 2006	
10.5	Amended and Restated Stockholders' Rights Agreement	S-1	333-83878	10.5	March 6, 2002	
10.6	Lease between Sobrato Land Holdings and Netflix, Inc.	10-Q	000-49802	10.15	August 2, 2004	
10.7	Lease between Sobrato Interests II and Netflix, Inc.	10-Q	000-49802	10.16	August 2, 2004	
10.9†	Description of Director Equity Compensation Plan	8-K	000-49802	10.1	July 5, 2005	
10.10†	Amended and Restated Executive Severance and Retention Incentive Plan					X
31.1	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
31.2	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
32.1*	Certifications of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes - Oxley Act of 2002					X

* These certifications are not deemed filed by the SEC and are not to be incorporated by reference in any filing we make under the Securities Act of 1933 or the Securities Exchange Act of 1934, irrespective of any general incorporation language in any filings.

† Indicates a management contract or compensatory plan.

Table of Contents

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

NETFLIX, INC.

Dated: May 7, 2009

By: /s/ REED HASTINGS

Reed Hastings
Chief Executive Officer
(Principal executive officer)

Dated: May 7, 2009

By: /s/ BARRY MCCARTHY

Barry McCarthy
Chief Financial Officer
(Principal financial and accounting officer)

Table of Contents

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† Indicates a management contract or compensatory plan.

EXHIBIT 10.10

Executive Severance and Retention Incentive Plan

Amended and Restated May 5, 2009

1. **Introduction.** The purpose of this Executive Severance and Retention Incentive Plan (the "Plan") is to provide assurances of specified severance benefits to eligible executives of Netflix, Inc. (the "Company") upon certain terminations of employment and to provide specified retention incentives to eligible executives of the Company upon a Change in Control. The Company believes that the severance plan set forth in this Plan will aid the Company in attracting and retaining highly qualified individuals. In addition, the Company believes that the retention incentive set forth in this Plan will help (a) assure that the Company will have continued dedication and objectivity from its executives notwithstanding the possibility, threat or occurrence of a Change in Control and (b) provide the Company's executives with an incentive to continue their employment and to motivate executives to maximize the value of the Company upon a Change in Control for the benefit of its stockholders. This Plan is an "employee welfare benefit plan," as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended. This document constitutes both the written instrument under which the Plan is maintained and the required summary plan description for the Plan.

2. **Important Terms.** To help you understand how this Plan works, it is important to know the following terms:

2.1 **"Administrator"** means the Company, acting through its Chief Talent Officer or any person to whom the Administrator has delegated any authority or responsibility pursuant to Section 9, but only to the extent of such delegation.

2.2 **"Base Pay"** means a Covered Executive's regular straight-time salary as in effect during the last regularly scheduled payroll period immediately preceding the date on which the Severance Benefit or Retention Incentive becomes payable. Base Pay does not include payments for overtime, shift premium, incentive compensation, incentive payments, bonuses, commissions or other compensation.

2.3 **"Board"** means the Board of Directors of the Company.

2.4 **"Retention Incentive"** means the compensation the Covered Executive will be provided pursuant to Section 4.

2.5 **"Cause"** means (i) an act of fraud or personal dishonesty undertaken by a Covered Executive in connection with the Covered Executive's responsibilities as an employee that is intended to result in substantial gain or personal enrichment of the Covered Executive, (ii) a Covered Executive's conviction of, or plea of nolo contendere to, a felony, or (iii) a Covered Executive's gross misconduct in connection with the performance of the Covered Executive's responsibilities as an employee or willful failure to perform a reasonable material component of the Covered Executive's responsibilities as an employee.

2.6 **"Change in Control"** means the first to occur of any of the following:

(a) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities; or

(b) consummation of the sale or disposition by the Company of all or substantially all of the Company's assets; or

(c) The consummation of a merger or consolidation of the Company, with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company, or such surviving entity or its parent outstanding immediately after such merger or consolidation; or

(d) A change in the composition of the Board, as a result of which fewer than a majority of the Directors are Incumbent Directors. "Incumbent Directors" means Directors who either (A) are Directors as of the Effective Date, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of those Directors whose election or nomination was not in connection with any transaction described in subsections (i), (ii) or (iii) or in connection with an actual or threatened proxy contest relating to the election of Directors.

2.7 **"Company"** means Netflix, Inc., a Delaware corporation, and any successor by merger, acquisition, consolidation or otherwise that assumes the obligations of the Company under the Plan, or becomes bound by the terms of the Plan by operation of law or otherwise.

2.8 **"Covered Executive"** means a common law employee of the Company who is employed at the Vice President level or higher.

2.9 **"Director"** means a member of the Company's Board of Directors.

2.10 **"Effective Date"** means July 1, 2005.

2.11 **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

2.13 **"Involuntary Termination"** means a termination of employment of a Covered Executive under the circumstances described in Section 3.1.

2.14 **"Option"** means a right granted pursuant to the Company's stock option plan(s) to purchase common stock of the Company pursuant to the terms and conditions of such plan(s).

2.15 **"Plan"** means the Executive Severance and Retention Incentive Plan, as set forth in this document, and as hereafter amended from time to time.

2.16 **"Severance Benefit"** means the compensation and other benefits the Covered Executive will be provided pursuant to Section 3.

2.17 **"Severance Date"** means the date on which an Eligible Executive experiences an Involuntary Termination.

2.18 **"Stock Option Allowance Value"** means an amount of cash equivalent to the stock option allowance then being used in calculating the number of options granted monthly to the Covered Executive for the calendar year of termination or Change in Control, as applicable.

3. **Severance.**

3.1 **Eligibility** . If at any time prior to a Change in Control, the Company (or any parent or subsidiary of the Company) terminates such Covered Executive's employment for other than Cause, death or permanent disability, then, subject to the Covered Executive's compliance with Section 3.3, the Covered Executive shall receive the Severance Benefit provided pursuant to this Section 3. For purposes of clarification, the severance amount set forth in 3.2 shall not be due or payable to any Covered Executive who shall have received or is eligible to receive the Retention Incentive.

3.2 **Severance Benefit** . Each Covered Executive who becomes eligible for a Severance Benefit under Section 3.1 shall be paid a lump sum cash payment equal to nine (9) months of Base Pay and nine (9) months of Stock Option Allowance Value. The Severance Benefit shall be paid to the Covered Executive as soon as administratively practicable following the Severance Date, but in no event more than two and one half months following the Severance Date but subject to Section 7 and to the Covered Executive's compliance with Section 3.3.

3.3 **Release and Non-Disparagement Agreement.** As a condition to receiving a Severance Benefit under this Plan, each Covered Executive will be required to sign a waiver and release of all claims arising out of his or her Involuntary Termination and employment with the Company and its subsidiaries and affiliates and an agreement not to disparage the Company, its directors, or its executive officers, in a form reasonably satisfactory to the General Counsel of the Company (the "Release"). The Release must be executed and effective within the period required by the Release but in no event later than sixty (60) days following the Covered Executive's Severance Date, inclusive of any revocation period set forth in the Release (such deadline, the "Release Deadline"). The Severance Benefit will not be paid or provided until the Release becomes effective. If the Release does not become effective by the Release Deadline, the Covered Executive will forfeit all rights to the Severance Benefit.

4. **Retention Incentive.**

4.1 **Eligibility.** An individual shall be eligible for the Retention Incentive under the Plan, in the amount set forth in Section 4.2, *only if* he or she (i) is a Covered Executive on the date of a Change in Control, and (ii) is not eligible for a Severance Benefit under Section 3.

4.2 **Retention Incentive.** Each Covered Executive eligible for a Retention Incentive in accordance with Section 4.1 shall be entitled to receive a lump sum cash payment equal to twelve (12) months of Base Pay and twelve (12) months Stock Option Allowance Value. The Retention Incentive shall be paid to the Covered Executive as soon as administratively practicable following the date of the Change in Control, but in no event more than two and one-half months thereafter.

4.3 **Parachute Payments.** In the event that a Severance Benefit or Retention Incentive provided for in this Plan or otherwise payable or provided to the Covered Executive (i) constitutes a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code") and (ii) but for this Section 4.3, would be subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the Employee's Severance Benefit or Retention Incentive hereunder shall be either

(a) delivered in full, or

(b) delivered as to such lesser extent which would result in no portion of such benefits being subject to the Excise Tax,

whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in the receipt by the Covered Executive on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. Unless the Company and the Covered Executive otherwise agree in writing, any determination required under this Section 4.3 shall be made in writing in good faith by an accounting firm chosen by the Administrator and reasonably acceptable to the Covered Executive (the "Accountants"). If a reduction in benefits is required only under the Plan, the reduction will apply to the Employee's Severance Benefit or Retention Incentive, as applicable. If a reduction in benefits is required under the Plan and one or more other arrangements or plans entered into with or maintained for the benefit of the Covered Executive that provides for vesting acceleration of equity awards, cash severance or retention benefits, and/or continued employee benefits coverage, the reduction will occur in the following order: the vesting acceleration of stock options or stock appreciation rights, then cash severance or retention benefits, then vesting acceleration of equity awards other than stock options or stock appreciation rights, and then Company-paid employee benefits coverage. In the event that acceleration of vesting of stock options, stock appreciation rights or other equity awards is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant for the Covered Executive's stock options, stock appreciation rights or other equity awards, as applicable. If two or more stock options, stock appreciation rights or other equity awards are granted on the same day, the stock options, stock appreciation rights or other equity awards, as applicable, will be reduced on a pro-rata basis. For purposes of making the calculations required by this Section 4.3, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Covered Executive shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section. The Company shall bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section 4.3.

5. **Reserved**

6. **Non-Duplication of Benefits.** Notwithstanding any other provision in the Plan to the contrary and except as provided in this Section 6, the Severance Benefits and Retention Incentive provided hereunder shall be in lieu of any other severance and/or retention plan benefits and the Severance Benefits and Retention Incentive provided hereunder shall be reduced by any severance paid or provided to a Covered Executive under any other plan or arrangement. Notwithstanding the preceding sentence, this Section 6 shall not apply to a Covered Executive to the extent such Covered Executive's separate, written employment, retention or other agreement with the Company explicitly exempts the Covered Executive from the preceding sentence.

7. **Section 409A.**

7.1 Notwithstanding anything herein to the contrary, it is the intent that the Retention Incentives and Severance Benefits payable under the Plan satisfy the requirements of the "short-term deferral" rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations and be exempt from Section 409A of the Code and the final regulations and any guidance promulgated thereunder ("Section 409A"). If the Severance Benefits (or any portion thereof), when considered together with any other severance payments or separation benefits, are considered deferred compensation subject to Section 409A (together, the "Deferred Compensation Separation Benefits"), no Deferred Compensation Separation Benefits or other severance benefits that otherwise are exempt from Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be considered due or payable until the Covered Executive has incurred a "separation from service" within the meaning of Section 409A. In addition, if the Covered Executive is a "specified employee" within the meaning of Section 409A at the time of the Covered Executive's separation from service (other than due to death), then any Deferred Compensation Separation Benefits otherwise due to the Covered Executive on or within the six (6) month period following the Covered Executive's separation from service will accrue during such six (6) month period and will become payable in a lump sum payment (less applicable withholding taxes) on the date six (6) months and one (1) day following the date of the Covered Executive's separation from service. All subsequent payments, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if the Covered Executive dies following his or her separation but prior to the six (6) month anniversary of his or her date of separation, then any payments delayed in accordance with this paragraph will be payable in a lump sum (less applicable withholding taxes) to the Covered Executive's estate as soon as administratively practicable after the date of the Covered Executive's death and all other Deferred Compensation Separation Benefits will be payable in accordance with the payment schedule applicable to each payment or benefit.

7.2 Each payment and benefit payable under the Plan is intended to constitute a separate payment for purposes of Section 1.409A-2 (b)(2) of the Treasury Regulations. Any payment or benefit that satisfies the requirements of the "short-term deferral" rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations shall not constitute a Deferred Compensation Separation Benefit. Any payment or benefit that entitles the Covered Executive to taxable reimbursements or taxable in-kind benefits covered by Section 1.409A-1(b)(9)(v) shall

not constitute a Deferred Compensation Separation Benefit. Any severance payment or portion thereof that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit shall not constitute a Deferred Compensation Separation Benefit. For this purpose, "Section 409A Limit" will mean the lesser of two (2) times: (A) the Covered Executive's annualized compensation based upon the annual rate of pay paid to Covered Executive during his or her taxable year preceding the Covered Executive's taxable year of the Covered Executive's separation from service as determined under Treasury Regulation 1.409A-1(b)(9)(iii)(A)(1) and any Internal Revenue Service guidance issued with respect thereto; or (B) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which the Covered Executive's employment is terminated.

7.3 It is the intent of this Plan to comply with the requirements of Section 409A so that none of the payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to so comply. Notwithstanding anything to the contrary in the Plan, including but not limited to Section 11, the Company reserves the right to amend the Plan as it deems necessary or advisable, in its sole discretion and without the consent of the Covered Executives, to comply with Section 409A of the Code or to otherwise avoid income recognition under Section 409A of the Code prior to the actual payment of Retention Incentives or Severance Benefits or imposition of any additional tax (provided that no such amendment shall materially reduce the benefits provided hereunder).

8. **Withholding.** The Company will withhold from any Severance Benefit and Retention Incentive all federal, state, local and other taxes required to be withheld therefrom and any other required payroll deductions.

9. **Administration.** The Company is the administrator of the Plan (within the meaning of section 3(16)(A) of ERISA). The Plan will be administered and interpreted by the Administrator (in his or her sole discretion). The Administrator is the "named fiduciary" of the Plan for purposes of ERISA and will be subject to the fiduciary standards of ERISA when acting in such capacity. Any decision made or other action taken by the Administrator prior to a Change in Control with respect to the Plan, and any interpretation by the Administrator of any term or condition of the Plan prior to a Change in Control, or any related document, will be conclusive and binding on all persons and be given the maximum possible deference allowed by law. Following a Change in Control, any decision made or other action taken by the Administrator with respect to the Plan, and any interpretation by the Administrator of any term or condition of the Plan, or any related document that (i) does not affect the benefits payable under the Plan shall not be subject to review unless found to be arbitrary and capricious or (ii) does affect the benefits payable under the Plan shall not be subject to review unless found to be unreasonable or not to have been made in good faith. The Administrator has the authority to act for the Company (in a non-fiduciary capacity) as to any matter pertaining to the Plan; *provided, however,* that this authority does not apply with respect to (a) the Company's power to amend or terminate the Plan or (b) any action that could reasonably be expected to increase significantly the cost of the Plan is subject to the prior approval of the senior officer of the Company. The Administrator may delegate in writing to any other person all or any portion of his or her authority or responsibility with respect to the Plan.

10. **Eligibility to Participate.** The Administrator will not be excluded from participating in the Plan if otherwise eligible, but he or she is not entitled to act or pass upon any matters pertaining specifically to his or her own benefit or eligibility under the Plan. A senior officer of Netflix, Inc. will act upon any matters pertaining specifically to the benefit or eligibility of the Administrator under the Plan.

11. **Amendment or Termination.** The Company reserves the right to amend or terminate the Plan at any time provided that (a) as the Plan relates to each individual who is a Covered Executive on the Effective Date, without such Covered Executive's written consent, the Plan may not be amended or terminated so as to reduce the amount of the Severance Benefit or Retention Incentive payable to the Covered Executive nor to restrict or reduce the Covered Executive's eligibility for a Severance Benefit or Retention Incentive, and (b) as the Plan relates to each individual who first becomes a Covered Executive after the Effective Date, (1) the Plan may be amended or terminated before such individual becomes a Covered Executive, and (2) after such individual becomes a Covered Executive, without such Covered Executive's written consent, the Plan may not be amended or terminated so as to reduce the amount of the Severance Benefit and Retention Incentive payable to the Covered Executive nor to restrict or reduce the Covered Executive's eligibility for a Severance Benefit or Retention Incentive. Any amendment or termination of the Plan will be in writing. Any action of the Company in amending or terminating the Plan will be taken in a non-fiduciary capacity. Upon a Change in Control and following the receipt by all eligible Covered Executives of the Retention Incentive provided for herein, this Plan shall have no further force or effect.

12. **Claims Procedure.** Any employee or other person who believes he or she is entitled to any payment under the Plan may submit a claim in writing to the Administrator within ninety (90) days of the earlier of (i) the date the claimant learned the amount of their Severance Benefit or Retention Incentive under the Plan or (ii) the date the claimant learned that he or she will not be entitled to any benefits under the Plan. If the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Plan on which the denial is based. The notice will also describe any additional information needed to support the claim and the Plan's procedures for appealing the denial. The denial notice will be provided within ninety (90) days after the claim is received. If special circumstances require an extension of time (up to ninety (90) days), written notice of the extension will be given within the initial ninety (90) day period. This notice of extension will indicate the special circumstances requiring the extension of time and the date by which the Administrator expects to render its decision on the claim.

13. **Appeal Procedure.** If the claimant's claim is denied, the claimant (or his or her authorized representative) may apply in writing to the Administrator for a review of the decision denying the claim. Review must be requested within sixty (60) days following the date the claimant received the written notice of their claim denial or else the claimant loses the right to review. The claimant (or representative) then has the right to review and obtain copies of all documents and other information relevant to the claim, upon request and at no charge, and to submit issues and comments in writing. The Administrator will provide written notice of his or her decision on review within sixty (60) days after it receives a review request. If additional time (up to sixty (60) days) is needed to review the request, the claimant (or representative) will be given written notice of the reason for the delay. This notice of extension will indicate the special circumstances requiring the extension of time and the date by which the Administrator expects to

render its decision. If the claim is denied (in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Plan on which the denial is based. The notice shall also include a statement that the claimant will be provided, upon request and free of charge, reasonable access to, and copies of, all documents and other information relevant to the claim and a statement regarding the claimant's right to bring an action under Section 502(a) of ERISA.

14. **Source of Payments.** All Severance Benefits and Retention Incentives will be paid in cash from the general funds of the Company; no separate fund will be established under the Plan; and the Plan will have no assets. No right of any person to receive any payment under the Plan will be any greater than the right of any other general unsecured creditor of the Company.

15. **Inalienability.** In no event may any current or former employee of the Company or any of its subsidiaries or affiliates sell, transfer, anticipate, assign or otherwise dispose of any right or interest under the Plan. At no time will any such right or interest be subject to the claims of creditors nor liable to attachment, execution or other legal process.

16. **No Enlargement of Employment Rights.** Neither the establishment or maintenance of the Plan, any amendment of the Plan, nor the making of any benefit payment hereunder, will be construed to confer upon any individual any right to be continued as an employee of the Company. The Company expressly reserves the right to discharge any of its employees at any time, with or without cause. However, as described in the Plan, a Covered Executive may be entitled to Severance Benefits under the Plan depending upon the circumstances of his or her termination of employment.

17. **Successors.** Any successor to the Company of all or substantially all of the Company's business and/or assets (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) will assume the obligations under the Plan and agree expressly to perform the obligations under the Plan in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under the Plan, the term "Company" will include any successor to the Company's business and/or assets which become bound by the terms of the Plan by operation of law, or otherwise.

18. **Applicable Law.** The provisions of the Plan will be construed, administered and enforced in accordance with ERISA and, to the extent applicable, the internal substantive laws of the State of California (with the exception of its conflict of laws provisions).

19. **Severability.** If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability will not affect any other provision of the Plan, and the Plan will be construed and enforced as if such provision had not been included.

20. **Headings.** Headings in this Plan document are for purposes of reference only and will not limit or otherwise affect the meaning hereof.

21. **Indemnification.** The Company hereby agrees to indemnify and hold harmless the officers and employees of the Company, and the members of its boards of directors, from all

losses, claims, costs or other liabilities arising from their acts or omissions in connection with the administration, amendment or termination of the Plan, to the maximum extent permitted by applicable law. This indemnity will cover all such liabilities, including judgments, settlements and costs of defense. The Company will provide this indemnity from its own funds to the extent that insurance does not cover such liabilities. This indemnity is in addition to and not in lieu of any other indemnity provided to such person by the Company.

22. **Additional Information.**

Plan Name:	Executive Severance and Retention Incentive Plan
Plan Sponsor:	Netflix, Inc. 970 University Avenue Los Gatos, CA 95032
Identification Numbers:	**EIN:** - 77-0467272 **PLAN:** 501
Plan Year:	Calendar year
Plan Administrator:	Netflix, Inc. *Attention:* Chief Talent Officer 970 University Avenue Los Gatos, CA 95032 (408) 399-3700
Agent for Service of Legal Process:	Netflix, Inc. *Attention:* General Counsel 970 University Avenue Los Gatos, CA 95032 (408) 399-3700 Service of process may also be made upon the Plan Administrator.
Type of Plan	Bonus Plan/Severance Plan/Employee Welfare Benefit Plan
Plan Costs	The cost of the Plan is paid by the Employer.

23. **Statement of ERISA Rights.**

As a Covered Executive under the Plan, you have certain rights and protections under ERISA:

(a) You may examine (without charge) all Plan documents, including any amendments and copies of all documents filed with the U.S. Department of Labor, such as the Plan's annual report (IRS Form 5500). These documents are available for your review in the Company's Human Resources Department.

(b) You may obtain copies of all Plan documents and other Plan information upon written request to the Plan Administrator. A reasonable charge may be made for such copies.

In addition to creating rights for Covered Executives, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate the Plan (called "fiduciaries") have a duty to do so prudently and in the interests of you and the other Covered Executives. No one, including the Company or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit under the Plan or exercising your rights under ERISA. If your claim for a severance benefit is denied, in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the denial of your claim reviewed. (The claim review procedure is explained in Sections 12 and 13 above.)

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials and do not receive them within thirty (30) days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and to pay you up to $110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If you have a claim which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court.

In any case, the court will decide who will pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds that your claim is frivolous.

If you have any questions regarding the Plan, please contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, you may contact the nearest area office of the Employee Benefits Security Administration (formerly the Pension and Welfare Benefits Administration), U.S. Department of Labor, listed in your telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

24. **Execution.**

In Witness Whereof , the Company, by its duly authorized officer, has executed this amended Plan on the date indicated below.

Netflix, Inc.

By /s/ David Hyman
Title **General Counsel**
Date May 5, 2009

EXHIBIT 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Reed Hastings, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Netflix, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15 (f) and 15d-15(f)) for the registrant and we have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: May 7, 2009

By: /s/ Reed Hastings
Reed Hastings
Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Barry McCarthy, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Netflix, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15 (f) and 15d-15(f)) for the registrant and we have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: May 7, 2009

By: /s/ Barry McCarthy
Barry McCarthy
Chief Financial Officer

EXHIBIT 32.1

CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Reed Hastings, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Netflix, Inc. for the quarter ended March 31, 2009 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Netflix, Inc.

Dated: May 7, 2009

By: /s/ Reed Hastings

Reed Hastings
Chief Executive Officer

I, Barry McCarthy, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Netflix, Inc. for the quarter ended March 31, 2009 fully complies with the requirements of Section 13 (a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Netflix, Inc.

Dated: May 7, 2009

By: /s/ Barry McCarthy

Barry McCarthy
Chief Financial Officer