

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement” or “Agreement”) is entered into by and between the American Council of the Blind (“ACB”), the Bay State Council of the Blind (“BSCB”), and Robert Baran, as an individual, (“Baran”) (collectively, “Claimants”), and Netflix Inc. (“Netflix”).

Recitals

- A. On October 15, 2014, DRA transmitted a letter on behalf of the American Council of the Blind, the Bay State Council of the Blind, and Robert Baran to Netflix expressing concerns regarding the screen-reader accessibility of Netflix’s website and applications, and the availability of audio description services.
- B. Claimants and Netflix (collectively, the “Parties”) have determined that it is in their mutual best interests to resolve all potential claims and disputes between them relating to the screen-reader accessibility of Netflix’s website and applications, and/or the availability of audio description services through Netflix’s video streaming and video disc rental services (collectively, the “Claims”).
- C. To avoid the costs and uncertainty of litigation, the Parties have negotiated improvements to the Netflix website and mobile applications, and negotiated increased availability of videos with audio description in Netflix’s video streaming and disc rental libraries.
- D. On or about January 15, 2016, Plaintiffs and Netflix entered into a written document constituting an expression of the terms by which they intended to resolve the Claims (the “Term Sheet”).
- E. The Parties desire to settle the disputes between them, as this Settlement Agreement sets forth below.
- F. In consideration of the mutual covenants, representations, warranties and other terms and conditions contained herein, the sufficiency of which all the Parties acknowledge, and without admission of liability by any of the Parties, each of the Parties agrees as follows:

Terms

1. Incorporation of Recitals

The Recitals above are incorporated herein by reference.

2. Definitions

- 2.1 “Applicable Devices” means devices that run the Netflix native application on Apple iOS 8 or later, Apple TV versions 3G and later, Android 4.4 or later, Windows 7 or later, and Windows Phone v10 or later.

- 2.2 “Audio Description” or “AD” means narration added to the soundtrack to describe important visual details that cannot be understood from the main soundtrack alone.
- 2.3 “BBC Mobile Accessibility Standards” means the British Broadcasting Corporation’s Mobile Accessibility Standards and Guidelines version 1.0 or its applicable successor.
- 2.4 “Confidential Rider” means the document titled “CONFIDENTIAL RIDER TO NETFLIX SETTLEMENT AGREEMENT” that is attached to this document.
- 2.5 “Effective Date” means the date of the last signature on this executed agreement.
- 2.6 “Netflix Website” means the website with the domain netflix.com.
- 2.7 “Parties” means Claimants and Netflix.
- 2.8 “Settlement Agreement” or “Agreement” means this document and its Confidential Rider.
- 2.9 “Term Sheet” means the written document entered into by Claimants and Netflix entered on or about January 15, 2016 containing terms by which they intended to resolve the Claims.
- 2.10 “WCAG 2.0” means the Web Content Accessibility Guidelines (WCAG) 2.0 developed by the Web Content Accessibility Guidelines Working Group of the World-Wide Web Consortium (W3C).”

3. Accessibility of Applications on All Applicable Devices

- 3.1 BBC Mobile Accessibility Standards for Mobile Applicable Devices. Netflix shall ensure that its applications on mobile Applicable Devices comply with the BBC Mobile Accessibility Standards version 1.0 or its then-applicable successor on or before December 31, 2016.
- 3.2 Specific Improvements. By December 31, 2016, Netflix shall ensure that the updated versions of all Netflix applications for all Applicable Devices provide blind individuals using screen-reading technology with access to the services, privileges, advantages, and accommodations of the Netflix application that are also available to sighted users, including:
 - 3.2.1 Searching and browsing all videos that the Netflix application presents;
 - 3.2.2 Accessing all synopses, cast lists, reviews, or other information about videos available through the Netflix application;
 - 3.2.3 Selecting specific videos, including browsing and selecting episodes within a series, for viewing;
 - 3.2.4 Adding videos to “My List” and rating videos; and
 - 3.2.5 Accessing all video player controls, including controls for activating audio description services, where available.

4. Accessibility of the Netflix Website

- 4.1 WCAG Compliance. On or before December 31, 2015 and for the term of the Settlement Agreement, Netflix shall ensure that its website, for browsers that support HTML5 video and premium video extensions, complies with the AA standard of WCAG 2.0 except for obligations to provide audio description for video content. For audio description of video content, access will be provided to the extent set forth below.
- 4.2 Specific Improvements. Netflix shall ensure that its website provides blind individuals using screen-reading technology with access to the services, privileges, advantages, and accommodations of the Netflix website that are also available to sighted users including:
 - 4.2.1 Searching and browsing all videos available through Netflix's streaming services and DVD rental services;
 - 4.2.2 Accessing synopses, cast lists, reviews, and all other information available for videos;
 - 4.2.3 Selecting specific videos, including browsing and selecting episodes within a series, for viewing;
 - 4.2.4 Adding items to the watch list;
 - 4.2.5 Accessing all video player controls, including controls for activating audio description services, where available;
 - 4.2.6 Navigating to each of the two galleries containing audio described titles from the Netflix home pages;
 - 4.2.7 Ensuring that both the disc and streaming galleries containing audio-described titles and the Audio Description enhanced customer service page are screen-reader accessible; and
 - 4.2.8 Accessing account management tools.

5. Enhanced Customer Assistance

Netflix will provide customer service representatives with materials, including knowledge base content or similar documentation, regarding handling questions about audio description issues. Netflix will provide a webpage that contains information for individuals who are blind or visually-impaired, including but not limited to customer service contact information, a list of which browsers support HTML5, and a submission form for reporting screen-reader access barriers. Netflix agrees to consider Plaintiffs' proposals with respect to this issue.

6. Audio Description

- 6.1 Audio Description for Video Content in Streaming Service.
 - 6.1.1 Third-Party Content Added to the Netflix Streaming Service. Upon the Effective Date of the Settlement Agreement and for the term of the agreement, Netflix shall request audio description assets in all new contracts with streaming content providers.

- 6.1.2 **Third-Party Content Already in the Netflix Streaming Service.** Upon the Effective Date of the Settlement Agreement and for the term of the agreement, Netflix shall make reasonable efforts to obtain existing audio description assets for videos provided by third parties that are already in the Netflix streaming library on the Effective Date of the Settlement Agreement.
- 6.1.3 **Original Content in Streaming Service.** Netflix agrees to provide audio description for scripted streaming content for television and movies branded as Netflix Original and for which Netflix controls the necessary rights for creating audio description. For those Netflix Original titles where Netflix does not control the rights for audio description, Netflix will make commercially reasonable efforts to secure and offer audio description. For those titles where audio description is offered, Netflix will make commercially reasonable efforts to offer audio description within 30 days of the launch date of the title and will strive to offer audio description at launch of the title.
- 6.1.4 **Delivery of Audio Description for Streaming Video Content.** Netflix shall make audio description available, for all content for which Netflix has audio description, on the Netflix streaming website for browsers that use HTML5 video, applications for all Applicable Devices, and any other Netflix platform that supports audio description. Netflix shall make audio description available on these interfaces as it becomes available consistent with the applicable timelines set forth in this Settlement Agreement.
- 6.1.5 **Audio Description Controls.** On or before December 31, 2015, for each video in the Netflix streaming library, Netflix shall provide a screen-reader accessible control to activate and deactivate audio description on Netflix website on browsers using HTML5. On or before December 31, 2016, Netflix shall provide a screen-reader accessible control to activate and deactivate audio description on applications for all Applicable Devices, and any other Netflix platform that supports audio description. Netflix shall maintain the availability and screen-reader accessibility of these controls for the term of the Settlement Agreement.
- 6.1.6 **Audio Description Search for Streaming Content.** On or before December 31, 2016, Netflix shall provide the capability, on the Netflix website, applications for all Applicable Devices, Apple TV 3G and later, and any other Netflix platform that supports audio description, that allows users to access a list of all streaming content that includes audio description. On the Netflix website, Netflix further agrees to make audio description content browseable by the following categories: **(a)** the current 21 major categories in the Netflix streaming Browse menu -- TV; Action; Anime; Children & Family; Classics; Comedies; Cult Movies; Documentaries; Dramas; Faith & Spirituality; Gay & Lesbian; Holiday Favorites; Horror; Independent; International Movies; Music; Musicals; Romance; Sci-Fi; Sports Movies; Thrillers; **(b)** the current categories by which users may sort titles in the AD gallery (Suggestions for You, Highest Rated, A to Z, Z to A, and Year Released); and **(c)** new arrivals to AD (i.e., titles with newly added AD assets). While these specific categories in section (a) above may change over time, Netflix will make reasonable efforts to ensure

that streaming content is searchable for audio description using the then-current list of major categories. In the Netflix mobile application, Netflix agrees to create and maintain an Audio Description category for streaming content that can be viewed by categories as follows: currently content in the mobile application is divided up among approximately 10 to 15 primary categories. Within each of these primary categories, the category is then divided up into various subtopics, each of which has a pre-selected group of video content that the user can browse among using a scroll bar under each subtopic. There is no further search capability within each sub-topic. Netflix will provide equivalent category divisions for the AD content on the mobile application by creating and maintaining a set of subtopics that appear when the primary AD category link is selected. The subtopics under the AD category will in general match the list of the 10 to 15 other primary categories. Each subtopic within the AD category will then provide a pre-selected group of video content that the user can browse among using a scroll bar under each subtopic.

- 6.1.7 Audio Description Search for Discs. On or before December 31, 2016, Netflix shall provide a search filter, on the Netflix website that allows users to sort all discs that include audio description by the following categories: **(a)** the current 19 major categories in the Netflix disc Browse menu – Action & Adventure; Anime & Animation; Children & Family; Classics; Comedy; Documentary; Drama; Faith & Spirituality; Foreign; Gay & Lesbian; Horror; Independent: Music & Musicals; Romance; Sci-Fi & Fantasy; Special Interest; Sports & Fitness; Television; and Thrillers; **(b)** the current categories by which users may sort titles in the AD disc gallery (Suggestions, Highest Rated, Title A to Z, Title Z to A, Year: Newer, and Year: Older); and **(c)** new arrivals to AD discs (i.e., disc titles with newly added AD assets). While these specific categories in section (a) above may change over time, Netflix will make reasonable efforts to ensure that streaming content is searchable for audio description using the then-current list of major categories.

6.2 Audio Description for Third-Party Content in Netflix Disc Service.

- 6.2.1 Third-Party Content Added to the Netflix Disc Service. For all videos provided by third-parties that are added to the Netflix video rental service after the Effective Date of the Settlement Agreement, Netflix shall make commercially reasonable efforts to offer videos on discs that are equipped with audio description whenever such videos are available.
- 6.2.2 Audio Description Services for Video Disc Service Users. By June 30, 2016, Netflix will make a one-time reasonable effort to check the titles listed on Exhibit A to this Settlement Agreement against Netflix's disc inventory and tag those discs that Netflix has as having AD assets. The parties understand this tagging is not likely to be fully accurate, at no fault of Netflix, though this accuracy will invariably improve over time, as individuals identify discs incorrectly tagged as having AD.

7. Assessment and Reporting

7.1 Beginning 180 days after execution of this Settlement Agreement, Netflix shall submit a confidential written report to Disability Rights Advocates (“DRA”) as counsel for ACB, BSCB, and Robert Baran (as an individual), no more than quarterly upon DRA’s written request for the first year of the settlement term and annually thereafter for the duration of the settlement term. The confidential written report shall include a description of steps Netflix has taken to comply with the terms of the Settlement Agreement and a summary of complaints received regarding audio description and/or screen-reader access barriers.

8. Dispute Resolution

8.1 At any point during the term of the Settlement Agreement, if Claimants believe that Netflix is not in compliance with this Settlement Agreement, then the Claimants shall notify Netflix in writing of the alleged noncompliance(s), specifically identifying same, and Netflix shall have 30 days from receipt of such notice to cure the alleged breaches. If Netflix disputes the alleged breach, the Parties shall meet and confer to resolve this dispute in a reasonable fashion.

8.2 If the Parties are unable to resolve the dispute, the Parties may bring the dispute to a third-party neutral for arbitration. If the Parties cannot agree on a neutral and schedule arbitration within 90 days, then the Parties shall request that JAMS provide a list of five randomly chosen neutrals with each Party having the right to strike two names from the list to determine the neutral to arbitrate the matter. The neutral shall award relief in accordance with applicable law. The decision of the neutral shall be binding on the Parties. The Parties shall equally advance the cost of the arbitration proceeding. Fees and costs incurred in any such arbitration, as well as any legal proceeding necessary to enforce the arbitrator’s decision, may be claimed and recovered by the prevailing Party in accordance with applicable law. The parties agree that JAMS shall retain jurisdiction to resolve any disputes currently pending under the Settlement Agreement at the end of the term of the agreement.

9. Attorneys’ Fees and Costs

9.1 The Parties agree that the Confidential Rider shall resolve claims for attorneys’ fees and costs.

10. Release

10.1 ACB, BSCB, and Baran (as an individual) hereby release Netflix from any and all claims, liabilities, obligations, demands, and actions, that could have been brought up through the term of this agreement, as set forth in Paragraph 12, against Netflix concerning screen-reader accessibility of the Netflix website and mobile applications and the availability of audio description through Netflix’s video streaming and video disc rental service. Notwithstanding this release, ACB, BSCB and Baran retain the right to enforce the terms of this agreement pursuant to the dispute resolution provisions of the agreement for the term of the agreement.

10.2 The Parties, upon the advice of legal counsel, waive all benefits under section 1542 of the California Civil Code, as well as under any other statutes, laws of any of the states, and common law principles of similar effect. Plaintiffs acknowledge that they have read and understood section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

11. No Warranty for Devices That Do Not Support Audio Description

The Parties understand that certain devices may not support audio description. Such players' inability to support audio description provided herein will not be the basis for a claim for breach of the Settlement Agreement; however, Netflix will use good faith efforts to ensure that current software and all future software updates for devices support audio description functionality.

12. Term of the Settlement Agreement

The term of this Settlement Agreement shall be until January 15, 2019.

13. Miscellaneous Terms

13.1 **Entire Agreement.** This Settlement Agreement, together with the Confidential Rider, contains the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersedes all other prior negotiations, agreements, documents (including, but not limited to, the Term Sheet), arrangements and undertakings with respect to matters set forth herein, which have been and are merged into this Settlement Agreement.

13.2 **Amendment and Modification.** The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of the Claimants and Netflix.

13.3 **Power and Authority.** Each person executing this Settlement Agreement warrants and represents that he or she has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to this Settlement Agreement to effectuate its terms.

13.4 **No Assignment of Claims.** Claimants represent and warrant that they own the claims, demands, rights, and interests that are the subject of this Settlement Agreement, have not assigned or transferred any of those claims, demands, rights, and interests,

including by operation of law, and those claims, demands, rights, and interests are free of encumbrances and rights of other persons.

13.5 Counterparts and Signatures. This Settlement Agreement may be executed in one or more counterparts, and may be executed by facsimile or electronic signature. All executed counterparts and each of them shall be deemed to be one and the same instrument.

13.6 Preparation and Construction. All Parties have contributed substantially and materially to the preparation of this Settlement Agreement and the terms of the agreement shall not be construed more strictly against one Party than another.

13.7 Headings. The section headings in this Settlement Agreement are for the Parties' convenience and shall not be deemed a part of the various terms and provisions of this Settlement Agreement, nor used to limit the construction thereof.

13.8 Confidentiality. The Parties shall not disclose any of the terms of the Confidential Rider, or, without Netflix's written consent, any materials that Netflix may provide under Section 7 (Assessment and Reporting), to any third party, except: (i) as may be required by any state or federal statute or by court order or subpoena; (ii) in a proceeding brought for the purpose of enforcing this Settlement Agreement; or (iii) to the Parties' respective professional advisors who agree to comply with this confidentiality provision, such as attorneys or accountants. All other terms of the Settlement Agreement are not confidential, except that the parties shall agree upon a date for issuance of any press releases concerning the settlement.

13.9 Severability. If any provision of this Settlement Agreement is unenforceable or invalid under any applicable law or is so held by applicable court decision, such unenforceability or invalidity shall not render this Settlement Agreement unenforceable or invalid as a whole, and, in such event, the provision shall be changed and interpreted so as to best accomplish the objectives of the Parties within the limits of applicable law or applicable court decision.

13.10 No Admission of Liability. This Settlement Agreement is made in settlement and compromise of a dispute, and no Party to this Settlement Agreement, by entering into it, admits wrongdoing, fault, or liability. This Settlement Agreement shall not be asserted by any Party as an admission of wrongdoing, fault, or liability.

13.11 Successors and Assigns. No party may assign any of its rights nor delegate any of its duties under this Settlement Agreement to any third party without the express prior written consent of the other Party to this Settlement Agreement; provided that, notwithstanding the foregoing, Netflix may assign this Settlement Agreement to: (1) any corporation or other entity resulting from any merger, consolidation, or other reorganization involving Netflix, (2) any of its subsidiaries, franchises or affiliates, or (3) any person or organization to which it transfers all or substantially all of its assets. Any prohibited assignment shall be null and void for all purposes. The obligations and

requirements set forth in this Settlement Agreement shall bind the agents, successors, affiliates, and actual assigns of each of the Parties.

SIGNATURES

FOR CLAIMANTS:

Dated: April ___, 2016

By: _____
Name: Robert Baran, an individual

Dated: April ___, 2016

American Council of the Blind

By: _____
Name: Kim Charlson
Title: President

Dated: April ___, 2016

Bay State Council of the Blind

By: _____
Name: Brian Charlson
Title: President

FOR NETFLIX:

Dated: April ___, 2016

Netflix Inc.

By: _____
Name:
Title:

APPROVED AS TO FORM:

Dated: April ___, 2016

Disability Rights Advocates

By: _____

Name: Laurence Paradis

Title: Executive Director

Dated: April ___, 2016

Netflix, Inc.

By: _____

Name: Hilary Ware

Title: Vice President & Associate General
Counsel