

NETFLIX INC

FORM 8-K (Current report filing)

Filed 12/06/12 for the Period Ending 12/06/12

Address	100 WINCHESTER CIRCLE . LOS GATOS, CA 95032
Telephone	408-540-3700
CIK	0001065280
Symbol	NFLX
SIC Code	7841 - Video Tape Rental
Industry	Broadcasting & Cable TV
Sector	Services
Fiscal Year	12/31

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

Current Report

Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported):
December 5, 2012

NETFLIX, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

000-49802
(Commission
File Number)

77-0467272
(I.R.S. Employer
Identification No.)

100 Winchester Circle
Los Gatos, CA
95032
(Address of principal executive offices)
(Zip Code)

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

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 7.01 Regulation FD Disclosure.

On December 5, 2012, Netflix, Inc. (“the Company”) and its Chief Executive Officer Reed Hastings each received a “Wells Notice” from the Staff of the Securities and Exchange Commission (“SEC”) indicating its intent to recommend to the SEC that it institute a cease and desist proceeding and/or bring a civil injunctive action against Netflix and Mr. Hastings for violations of Regulation Fair Disclosure, Section 13 (a) of the Securities Exchange Act and Rules 13a-11 and 13a-15 thereunder. A copy of a statement that will be made by Mr. Hastings to subscribers on his publicly available Facebook page is attached as Exhibit 99.1.

(d) Exhibits

99.1 Facebook statement dated December 6, 2012.

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 hereunto duly authorized.

Date: December 6, 2012

NETFLIX, INC.

/s/ David Hyman

David Hyman

General Counsel

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
99.1	Facebook statement dated December 6, 2012.

SEC staff questions a Facebook post. Fascinating social media story.

We use blogging and social media, including Facebook, to communicate effectively with the public and our members.

In June we posted on our blog that our members were enjoying “nearly a billion hours per month” of Netflix, and people wrote about this. We did not also issue a press release or 8-K filing about this.

In early July, I publicly posted on Facebook to the over 200,000 of you who subscribe to me that our members had enjoyed over 1 billion hours in June, highlighting how strong our content was. There was press coverage as there are many reporters and bloggers among you, my public followers. Some of you re-posted my post. Again, we did not also issue a press release or file an 8-K about this.

SEC staff informed us yesterday that they are recommending that the SEC bring a civil action against us for my July 1 billion hour public post, asserting we violated “Reg FD”. This rule is designed to ensure that individual investors have equal access to information as large institutional investors, by prohibiting selective disclosure of material information. The SEC staff believes that I gave you all “material” investor information in my post and that we needed to instead release the June viewing fact “publicly” with an 8-K filing or press release.

I want to note a few things.

First, we think posting to over 200,000 people is very public, especially because many of my subscribers are reporters and bloggers.

Second, while we think my public Facebook post is public, we don't currently use Facebook and other social media to get material information to investors; we usually get that information out in our extensive investor letters, press releases and SEC filings. We think the fact of 1 billion hours of viewing in June was not “material” to investors, and we had blogged a few weeks before that we were serving nearly 1 billion hours per month.

Finally, while our stock rose the day of my public post, the increase started well before my mid-morning post was out, likely driven by the positive Citigroup research report the evening before.

We remain optimistic this can be cleared up quickly through the SEC's review process.

-Reed