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## Help Wanted: What Do Netflix's Talent Acquisition Practices Mean for the Future of Fixed-Term Employment Contracts?

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# Help Wanted: What Do Netflix's Talent Acquisition Practices Mean for the Future of Fixed-Term Employment Contracts?

BY [ABIGAIL VAPNYAR](#) / ON OCTOBER 26, 2018



When it comes to succeeding in the entertainment and technology industries, “the talent” employed by a company can be just as critical as market share or customers. A 2017 study, which focuses on internal and external employee transitions in the tech industry, draws attention to the fact that the shifting of employees between companies plays a vital role in staying ahead of the competition.<sup>[1]</sup> According to the study, Netflix is particularly invested in creating a top-notch workforce, spending ten times more on acquiring new talent than any other corporation in the study.<sup>[2]</sup> While Netflix’s determination to build the best team possible may be good news for binge-watchers everywhere, the subscription-based media streaming service seems to have ruffled a few feathers in the process.

On October 5<sup>th</sup> of this year, Viacom filed a suit against Netflix in Los Angeles Superior Court, alleging that the streaming service had engaged in unfair competition and intentionally interfered with an employee's contract. Specifically, Viacom alleges that Netflix poached a Viacom executive that was still bound by her employment agreement for another nineteen months.[\[3\]](#) According to the complaint, Netflix "cherry picks" employees from other entertainment companies, encourages them to breach their existing contractual obligations, and even offers to provide legal representation for matters arising from violating their existing employment agreement.[\[4\]](#) Furthermore, Viacom's complaint does not claim this poaching to be a one-time event, but rather a "campaign of targeting and poaching other Viacom executives."[\[5\]](#) Viacom is seeking relief in the form of a permanent injunction, compensatory damages, disgorgement of the amounts gained by Netflix as a result of its poaching activities, and punitive damages.[\[6\]](#)

Viacom is not the first entertainment company to take issue with Netflix's recruiting habits in court.[\[7\]](#) Twentieth Century Fox filed a complaint against Netflix in 2016 for poaching two Fox executives that were also still under a fixed term contract.[\[8\]](#) However, Netflix has responded to the lawsuit with an aggressive defense, arguing that Fox's fixed term employment contracts are unenforceable.[\[9\]](#) The contracts for both Fox employees claimed "that the executives provided 'special, unique, extraordinary and intellectual' services of a 'peculiar value' ...."[\[10\]](#) Netflix argues that characterizing managerial employees as talent who are as valuable as movie stars,[\[11\]](#) is unlawful because it misrepresents the nature of the employee's position. This characterization of the employee's position serves allows for Fox to seek injunctive relief—a move Netflix considers "anti-competitive" and "a form of involuntary servitude."[\[12\]](#) Further, the Fox employment agreements include an exclusivity clause as well as a provision which grants Fox the irrevocable option to extend employment for another fixed term of years.[\[13\]](#) The California appellate court has denied Fox's motion to strike Netflix's counter claim, allowing it to move forward.[\[14\]](#)

It is unclear whether Netflix will also defend the Viacom suit with a similar attack on fixed term contracts, but one thing is certain: Netflix has changed the conversation. These disputes are no longer cut and dry conflicts surrounding an employer's ability to have a stable workforce. Instead, these suits are now re-characterized as an attack on employee mobility that is part of a much longer saga of "ruthless Hollywood contracting practices" that dates all the way back to Shirley Temple.[\[15\]](#) While their re-characterization is compelling, Netflix will not have an easy burden to bear. Although California law has been traditionally interpreted to invalidate agreements that impede an employee's ability to compete after their existing employment terminates, the Business and Professions Code § 16600 has not been held to affect limitations on what an employee can do while still employed.[\[16\]](#) This will be a hurdle that Netflix will need to overcome in order to succeed in its counterclaim. However, if the outcome is favorable to Netflix, employment structure in the entertainment industry can potentially be impacted.

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[1] *The Tech Job Network*, Paysa.com (Feb. 27, 2017), <https://www.paysa.com/blog/the-tech-job-network>.

[2] *Id.*

[3] Complaint at 1, 4, *Viacom Int'l Inc. v. Netflix, Inc.*, No. 18STCV00496, 2018 WL 5020779 (Cal Super. C.D. 2018).

[4] *Id.* at 3-4.

[5] *Id.* at 5.

[6] *Id.* at 8.

[7] *See Id.* at 1 (“Viacom is informed and believes... that Netflix has illegally induced employees to breach contracts with other industry employers, at least one of who is pursuing court enforcement of its rights.”).

[8] Complaint at 1, *Twentieth Century Fox Film Corp. v. Netflix, Inc.*, No. SC126423, 2016 WL 5328100 (Cal. Super. Ct. W.D. 2016).

[9] Brief for Respondent at 22, *Twentieth Century Fox Film Corp. v. Netflix, Inc.*, No. SC126423 (Cal. Ct. App., Sept. 12, 2017).

[10] *Id.* at 20.

[11] *Id.*

[12] *Twentieth Century Fox Film Corp. v. Netflix, Inc.*, No. B280607, 2018 WL 3198560, at \*2 (Cal. Ct. App. June 29, 2018).

[13] *Id.*

[14] *Id.* at \*1.

[\[15\]](#) Brief for Respondent at 16, *Twentieth Century Fox Film Corp. v. Netflix, Inc.*, No. SC126423 (Cal. Ct. App., Sept. 12, 2017).

[\[16\]](#) *Angelica Textile Servs., Inc. v. Park*, 163 Cal. Rptr. 3d 192, 204 (App. 4th D. Div. 1, 2013).