

# Netflix CEO Finds Out What Happens When Social Media and Securities Law Collide

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Publicly traded companies may be forced to reconsider their [social media business practices](#) or face penalties from the Securities and Exchange Commission. Netflix recently announced that it received a [Wells Notice](#) from the agency in connection with a social media post made by its CEO, Reed Hastings.

The offending post stated: *Congrats to Ted Sarandos, and his amazing content licensing team. Netflix monthly viewing exceeded 1 billion hours for the first time ever in June. When House of Cards and Arrested Development debut, we'll blow these records away. Keep going, Ted, we need even more!*

The post received significant media coverage, and the company's stock enjoyed a 13% gain the next day. However, in a subsequent Facebook post earlier this month, Netflix's news was not so good. The company disclosed that the SEC had launched an investigation into possible violations of [corporate disclosure rules](#).

The key legal question is whether the figure cited in the Facebook post constitutes "material non-public information." The SEC contends that Netflix ran afoul of [Regulation FD](#). The SEC rule, which aims to ensure full and fair disclosure, provides that when an issuer discloses material nonpublic information to certain individuals or entities, such as stock holders or analysts, it must also disclose that information to the public.

The SEC's position is that the information posted on [Facebook](#) should have also been disclosed via an SEC filing or official company press release. Meanwhile, Netflix contends that the information was already disclosed to a wide audience. "We think posting to over 200,000 people is very public, especially because many of my subscribers are reporters and bloggers," Hastings stated.

The company also disputes whether the information should be considered material. "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," Hastings added. "We think the fact of 1 billion hours of viewing in June was not 'material' to investors."

Other public companies with a strong social media presence will be closely watching how the situation is ultimately resolved. While the SEC has traditionally required companies to post material information on their websites or issue a formal press release, the case may lead to policy changes on how social media sites like Facebook and [Twitter](#) fit into the disclosure rules.