

Comments on the Response of the United States Postal Service to Order No. 126 by the Electronic Frontier Foundation.

The Electronic Frontier Foundation is a non-profit, member supported public interest organization dedicated to protecting privacy, free speech and innovation in the digital age. For over a decade, we have been heavily involved in encouraging and defending Internet users' right to use strong encryption to create innovative applications such as non-repudiable time-stamping, digital signatures, and encrypted private e-mail.[1]

We are concerned that there is a substantive difference between what the USPS originally offered in its Electronic Postmark (EPM) service prior to the August 2007 date, and their current model (as documented by the USPS in Int. Response Order 74, and subsequent responses, including the response to Order No. 126). This difference has the affect of appearing to provide the USPS' s established brand to a new delivery service akin to GoodMail' s CertifiedEmail service, although this is unclear without knowing more details of USPS' s intended licensing agreement.

Authentication and encryption of email are vital approaches if we are to expand the wide range of services of authentication and privacy currently provided by physical mail, signatures, and public notaries to the new world of digital communications. EFF is keen to ensure that there is a free and flexible market for these offerings in the United States.

As part of our work protecting the free speech rights of Internet users, we also carefully monitor potential challenges to free communication online. Some of these threats are deliberately intended to block free speech online; others are the incidental side-effects of other technological developments.

In a recent case, we have cautioned against the use of technologies that potentially incentivise the over-filtering of email, with the intention of eliminating "spam", or unwanted bulk email. Spam filters operated by third-parties are an attractive offering provided by Internet Service Providers (ISPs) to their users, but we have in the past expressed concern that services that offer to pay ISPs in order to allow their customers' email through such anti-spam filters may set up a perverse incentive. An example of this problematic technology is that provided by GoodMail, in their CertifiedEmail service. GoodMail' s CertifiedEmail charges a per-message fee from users of its service, part of which it pays to ISPs. The ISPs receiving fees from GoodMail use the revenue to permit email marked with GoodMail' s CertifiedEmail mark to bypass their spam filters. We believe that this can provide a perverse incentive to ISPs, rewarding them with more revenue if their spam filters are so strict that legitimate mail is blocked. EFF' s prepared testimony before the California Senate Select Committee on E-Commerce, Wireless Technology and Consumer Driven Programming [2] provides more details on this position.

Previously, in the 1995-2001 period, the USPS offered time-stamping as a discreet service, the USPS Electronic Postmark. The provision of this service was then sub-contracted out from 2001-2007 to a single provider who conducted the actual process of time-stamping. Despite the description as an "electronic postmark", such time-stamping has little connection with postal delivery when provided as a separate electronic process. Instead, electronic time-stamping is a procedure not dissimilar to witnessing a document: a third-party vouches for the existence and exact contents of a document' s

contents at a particular time. Just as in witnessing a document, what is important in electronic time-stamping is that the time-stamper is a trusted and neutral third-party. We believe the USPS can usefully provide such a role, although it is not the only institution in the marketplace that has, or could develop, such a reputation.

Sub-contracting out to a particular company, as was the case from 2001-2007, does not affect this function: either the party that the USPS has sub-contracted is as trustworthy as an honest time-stamper, or it is not.

In August 2007, the USPS changed their model. Instead of subcontracting one company to provide USPS time-stamping, the UPTO is now planning to license out the intellectual property of the USPS to third-parties for the purposes of offering their own time-stamping services.

Those companies can also bundle other services with their time-stamping service. One example of this bundling is ePostmarks, a company that intends to offer "Postmarked Email" using the US Postal Service' s name, in which ePostmark' s USPS-licensed timestamp will be combined with GoodMail' s own certification process.[3]

It is unclear to EFF whether the USPS intends its license to provide for the USPS brand to be associated with both of these features, one concerned with time-stamping and once concerned with email delivery. We would request that Postal Regulatory Commission require that USPS provide more detail on the intended licensing agreement, as would have been provided in a more detailed response to Order 126.

If ePostmarks is offering an effectively USPS-branded delivery service, then we would state that this was a new USPS-approved service of delivering certified email -- and one, moreover, which we believe would have a harmful effect on the overall ecology of email delivery, authentication and free speech online.

If the USPS did not intend their name to be strongly attached to a third-party offering "certified" email delivery services, then we feel that the license should be amended or enforced to ensure that the clear line between time-stamping and delivery services. Without this clarification, the USPS may indeed be lending its name, and thereby profiting, from a new service.

Sincerely,
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[1] See <http://w2.eff.org/Privacy/Crypto/>

[2] See <http://w2.eff.org/spam/aolmail/2006-04-03-eff-goodmail-testimony.pdf> EFF' s prepared testimony before the California Senate Select Committee on E-Commerce, Wireless Technology and Consumer Driven Programming on AOL/Goodmail deal.

[3] See <http://www.epostmarks.com/info/whatispostmarkedemail.php> , cached at:
<http://web.archive.org/web/20080106113733/www.epostmarks.com/about/whatispostmarkedemail.php>