

example, Netflix provides the Postal Service with extensive proprietary data, public disclosure of which would be highly detrimental to Netflix's competitive interests, as it would allow competitors to acquire valuable insight into Netflix's cost structure and market penetration. Communications both within the Postal Service, and between the Postal Service and a customer, similarly implicate highly sensitive details concerning the customer's business. Therefore, the Postal Service responds to these discovery requests by noting that responsive documents are available for inspection conditional upon the ultimate promulgation of protective conditions in this docket, which is the subject of a pending joint motion, and the filing by a party seeking to review those documents of a certification that they will adhere to those conditions. To the extent that this approach is deemed insufficient under any Commission rule, the Postal Service hereby requests waiver of that rule in this instance.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing and Product Support

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RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-1. This question concerns the evaluation of Netflix DVD mailpieces by the Postal Service's engineering group in June 2002 (see Joint Statement of Undisputed and Disputed Facts at ¶¶ 75 and 76):

- (a) Please identify the individuals in the Postal Service's engineering group who were involved in the evaluation.
- (b) Please confirm that Exhibit GFL/USPS-1A (attached hereto) is a true and accurate copy of a letter dated June 24, 2002, from Ms. Sherry Freda of the Postal Service to Mr. Tom Dillon of Netflix. If you do not confirm without qualification, please explain fully.
- (c) Please produce a copy of the "June 11 letter from Mr. Laws (copy attached)" referenced in Exhibit GFL/USPS-1A.
- (d) Please produce all other documents generated by the Postal Service personnel (including but not limited to employees in the Engineering, Marketing and Mailing Standards groups) in connection with the evaluation.
- (e) What conclusions did Mr. Laws and other Postal Service engineering employees who evaluated the Netflix DVD mailer reach on or about June 11, 2002, concerning its effectiveness (or likely effectiveness) in protecting against DVD breakage from automated letter processing?
- (f) If the conclusions reached by George Laws and other the Postal Service engineering employees on or about June 11, 2002, concerning the effectiveness (or likely effectiveness) of the Netflix DVD mailer in protecting against DVD breakage from automated letter processing were not reduced to writing (or were reduced to writing in documents that the Postal Service has misplaced, lost or destroyed), please identify the engineering employees who were involved in reaching the conclusions.

MAIL PREPARATION AND STANDARDS



COPY

June 24, 2002

Mr. Tom Dillon
Vice President of Operations
Netflix
2219 Oakland Road
San Jose, CA 95131-1402

Dear Mr. Dillon:

This responds to your June 17 email message to Anita Blazotta, U.S. Postal Service, Chief Marketing Officer, and George Laws, U.S. Postal Service, manager of Letter Mail Technology, about the automation-compatibility tests conducted on letter-size mailpieces containing DVDs that your company sent on May 22 to our Engineering Department. As a point of clarification, the tests indicated that the reusable mailpieces were automation-compatible when outbound and thus would be eligible for automation letter rates.

As reported in the June 11 letter from Mr. Laws (copy attached), the tests also established that the return pieces, although not completely automation-compatible, were machinable. The return pieces were, for example, able to make the turns on the delivery barcode sorter and the advanced facer copier. Moreover, the samples did bend easily when subjected to a transport belt tension of 40 pounds around an 11-inch diameter turn without any apparent damage or sortation problems.

As a result, the return pieces tested would not be subject to the nonmachinable surcharge effective June 30, 2002, for mailpieces that must be handled manually. The determinations for the outbound processing and the inbound processing apply only to the samples submitted. If any changes are made to the design or construction of these mailpieces, they would have to be retested for machinability.


Sherry Freda
Manager

Enclosure

cc: George Laws, manager, Letter Mail Technology

PC:MPS:BergerNetfb0824

RESPONSES:

(a) George Laws and Hernan Borja.

(b) Confirmed.

(c)-(d) Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

(e) None. Engineering did not evaluate the Netflix mailer for its ability to protect a DVD from damage.

(f) N/A

GFL/USPS-2. Please produce all communications (a) within the Postal Service, or (b) between the Postal Service and Netflix, since June 11, 2002, concerning:

- (a) The letter issued on or about June 11, 2002, by George Laws concerning Netflix DVD mailers.
- (b) Any other conclusions reached by George Laws or other USPS employees on or about June 11, 2002, concerning Netflix DVD mailers.
- (c) Efforts made by Netflix in June 2002 to persuade the Postal Service to modify or overrule the findings of the Postal Service's engineering department with respect to Netflix DVD mailers.
- (d) The matters discussed in the letter dated June 24, 2002, from Ms. Sherry Freda to Mr. Tom Dillon.
- (e) The findings set forth in the letter dated June 24, 2002, from Ms. Freda to Mr. Dillon.

RESPONSE:

Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-3. Please produce all documents reflecting any written communication or relating to any oral communication since June 1, 2002, with Reed Hastings, Tom Dillon, William Henderson or Andrew Rendich concerning any of the following matters:

- (a) The degree of manual culling or priority processing received by Netflix DVD mailers;
- (b) The machinability or automation compatibility of Netflix DVD mailers;
- (c) The continued eligibility of Netflix DVD mailers for letter rates;
- (d) The speed and reliability of delivery of Netflix DVD mailers; or
- (e) Any other aspect of the service performance received by Netflix.

RESPONSE:

Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-4. Please produce all documents reflecting any written communication or relating to any oral communication since June 1, 2002, with any in-house or outside attorney of Netflix concerning any of the following matters:

- (a) The degree of manual culling or priority processing received by Netflix DVD mailers;
- (b) The machinability or automation compatibility of Netflix DVD mailers;
- (c) The continued eligibility of Netflix DVD mailers for letter rates;
- (d) The speed and reliability of delivery of Netflix DVD mailers; or
- (e) Any other aspect of the service performance received by Netflix.

RESPONSE:

Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-5. Please produce the following items relating to the OIG report:

- (a) The photographs and other matter redacted from pages 1 and 6 of the report.
- (b) The matter redacted from page 18 and Appendix B of the report.

RESPONSE:

(a)-(b) A complete, unredacted version of the OIG Report is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions. Unredacted copies of pages 1 and 6 of the Report are attached.

INTRODUCTION

Background

The U.S. Postal Service delivers optical disks, digital versatile discs (DVDs), compact discs (CDs), and minidisks for on-line rental service companies such as Netflix, Inc.[®], Blockbuster Online[®], GameFly[®], and Simply Audiobooks[®], through the use of prepaid envelopes using the Business Reply Mail (BRM) and Permit Reply Mail (PRM) formats. Subscribers receive the DVDs or CDs through the mail, generally with 1-day delivery.

These companies use the Postal Service for timely delivery of rented DVDs and CDs. For example, one DVD rental company operates more than 100 shipping centers throughout the U.S. and, on average, ships 1.6 million DVDs each day. Another DVD rental company ships DVDs via the Postal Service from 38 distribution centers in the U.S. Other companies have also entered the marketplace with similar product offerings, bringing increased revenue to the Postal Service.

Outbound PRM two-way DVD mailpieces processed with other First-Class Mail[®] at the Houston, Texas, Processing and Distribution Center (P&DC), November 2, 2006.



PRM is a mailer service which enables a permit imprint holder to receive First-Class Mail[®] and Priority Mail[®] back from customers by prepaying postage for reply pieces at the time of mailing. Mailers must distribute PRM pieces as part

company's return mailpieces from collection mail. The OIG did not observe any other PRM mailer's two-way DVD return mailpieces being manually processed as much as this specific mailer's pieces were manually processed.

At the P&DCs where the OIG observed Postal Service processing of two-way DVD mailers, operations personnel told the OIG that the return mailpieces were manually pulled to avoid damaging the mailpiece, jamming the mail processing equipment, and missorting during processing.

After being removed from the mailstream, PRM mailpieces at the Denver P&DC await facing and placing in trays, November 8, 2006.



The outside consultant's study also noted:

"Often employees cull the easily identifiable bright colored envelopes from the automated mail stream. Some supervisors in mail processing facilities believe these pieces will not run correctly on automation machinery based on their experiences working with this equipment, or feel that the risk of damage, mis-sorts, or rejects justifies their removal from the automated processing stream. It was not unusual to see containers of separated return DVDs at points throughout the mail processing flow."

Improper Notification
Letter Provided

On June 11, 2002, Engineering issued a letter to the DVD rental company regarding the test results of their two-way DVD mailpiece. Engineering concluded that the return portion of the two-way envelope used by this mailer was not

RESPONSE OF THE UNITED STATES POSTAL SERVICE
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GFL/USPS-6. Please produce all written communications between any employee or agent of the Postal Service and any employee or agent of Netflix since November 1, 2007, concerning any of the following matters:

- (a) The rates, classifications, mail preparation requirements, or standards for processing offered by the Postal Service to Netflix.
- (b) Any rate or service arrangement (whether formal or informal) established by the Postal Service for Netflix.
- (c) The terms of service established by the Postal Service for the DVD mail of Netflix.
- (d) The Postal Service's actual performance in processing and delivering DVDs to or from Netflix.
- (e) The breakage or loss of DVDs sent to or from Netflix.
- (f) The OIG report, or the investigation that led to the OIG report.
- (g) Changes in the Postal Service's preparation requirements for and handling of the DVD mail of Netflix after the issuance of the OIG report.
- (h) Possible changes in rates, fees, mail preparation requirements, or processing procedures for the DVD mail of Netflix.

RESPONSE:

Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

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GFL/USPS-10. This question concerns the changes in mailing standards for DVD mailers announced by the Postal Service in *Postal Bulletin* 22239 (August 14, 2008) at 64, and codified at DMM 201.3.1 *et seq.* The last sentence of the explanatory material in the *Postal Bulletin* announcement states: “Mailpieces previously approved in writing by the USPS® for automation prices continue to qualify for those standards even if they do not meet the new optional standards.”

(a) Have the two-way mailers used by Netflix been “previously approved in writing by the USPS® for automation prices”?

(b) Have the two-way mailers used by any other DVD rental company been “previously approved in writing by the USPS® for automation prices”?

(c) If the answer to (a) is yes and the answer to (b) is no, please explain why you believe that this preference for Netflix is appropriate.

(d) Please produce all documents, studies and analyses that support your response to part (c).

(e) Please produce any other documents, studies, analyses, memoranda or communications created since January 1, 2005, concerning the appropriateness of the preference referred to in part (c).

RESPONSE:

(a) Yes.

(b) Yes.

(c) N/A

(d) N/A

(e) N/A

RESPONSE OF THE UNITED STATES POSTAL SERVICE
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GFL/USPS-12. Please produce all documents created since February 23, 2006, reflecting any written communications or relating to any oral communications between the Postal Service and Blockbuster relating to Blockbuster's request on February 23, 2006, for manual culling and processing of inbound mail pieces for Blockbuster Online or the Postal Service's response to that request.

RESPONSE:

Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-13. Please produce any studies, analyses or internal communications created since February 23, 2006, concerning Blockbuster's request on February 23, 2006, for manual culling and processing of inbound mail pieces for Blockbuster Online or the Postal Service's response to that request.

RESPONSE:

Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
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GFL/USPS-14. Please produce all documents reflecting any written communication or relating to any oral communication since February 23, 2006, with any Blockbuster senior executive (i.e., assistant vice president or higher) or any attorney for Blockbuster concerning any of the following matters:

- (a) The degree of manual culling or priority processing received by Blockbuster DVD mailers;
- (b) The machinability or automation compatibility of Blockbuster DVD mailers;
- (c) The continued eligibility of Blockbuster DVD mailers for letter rates;
- (d) The speed and reliability of mail processing and delivery provided to Blockbuster DVD mailers; or
- (e) Any other aspect of the service performance received by Blockbuster.

RESPONSE:

No documentation responsive to this request has been found.

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GFL/USPS-17. This question concerns the following statements by the Postal Service in this docket:

(a) The second sentence of Paragraph 35 of the Postal Service's Answer, in which the Postal Service states that it "does not currently have a practice of manually culling out the DVD mailpieces of Netflix and Blockbuster; their mail is routinely processed in the automation letters mailstream."

(b) The third sentence of Paragraph 35 of the Postal Service's Answer, in which the Postal Service states that "some manual culling of DVDs being returned from customers may occur in local mail processing by personnel at the AFCS; bypassing automated processing is motivated by an interest in getting all mail processed during the available window so as to meet service standards and would accordingly apply to a lot of mail that is otherwise capable of being processed on automated equipment."

(c) Paragraph 36 of the Postal Service's Answer, in which the Postal Service states that the DVD processing practices described in the OIG report no longer reflect "current mail processing policy."

(d) Paragraph 36 of the Postal Service's Answer, in which the Postal Service states that "DVD mailpieces for other mailers, such as the largest movie DVD providers, are typically processed in the automation letters mailstream."

For each quoted statement, please produce all data, studies, and analyses, memoranda, other written communications and other documents on which you rely. If the statement is based on any oral communications, please identify the maker of, witnesses to, and date and location of each communication.

RESPONSE:

(a) Estimates of the relative percentages of Netflix and Blockbuster mail that is processed manually or on automation are derived from the OIG Report (for Netflix) and the Christensen study (for both mailers). These show that DVD mail being sent to the customer is usually processed as automation letters. See also the memorandum of December 18, 2003 relating to Netflix outbound processing, which is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions. For return mail, these studies show that Netflix mail is often culled from the automated letter stream for manual processing, though some amount is also processed in the automation mailstream. The Postal Service has so stipulated. See Joint Statement at ¶ 79. The

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Christensen study also showed that Blockbuster mail was also being culled, though to a much lesser degree than Netflix. The recent change to QBRM should have increased the amount of automated processing of Blockbuster mail relative to manual processing; however, no specific percentages are available.

(b) See the response to GFL/USPS-22.

(c) See the response to GFL/USPS-23.

(d) See the response to part (a).

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GFL/USPS-18. This question refers to Paragraph 85 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 85 contains the following contention by GameFly: "[T]he manual culling of Netflix return DVD mailers at the point of induction, and their diversion to high-priority manual processing, have remained standard practice." The Postal Service disputes this statement. *Id.*

- (a) Please produce all data, studies and analyses of the percentage of Netflix return DVD mailer volume that has received manual culling in each fiscal year since 2005, and any part of the current year for which data are available.
- (b) Please produce all data, studies and analyses of the percentage of Netflix return DVD mailer volume that has received high-priority manual processing in each fiscal year since 2005, and any part of the current year for which data are available.

RESPONSE:

(a)-(b) Available data as to the percentage of Netflix return DVD mail that is being manually culled and processed is found in the OIG Report and the Christensen study.

The Postal Service expects that the amount of manual processing of Netflix mail is likely at least as large as was set forth in the OIG Report, though no specific percentages are available.

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GFL/USPS-19. This question concerns paragraph 16 of the Postal Service's Answer filed on May 26, 2009, which states in part that "Respondent also affirmatively alleges that such mailpieces are routinely processed in the automation letters mail stream."

- (a) Please confirm that the phrase "such mailpieces," as used by the Postal Service in paragraph 16 of its Answer, referred to DVDs in lightweight envelopes with a total mailpiece weight less than one ounce. If you fail to confirm without qualification, please explain fully.
- (b) Please define the phrase "routinely processed" in terms of a percentage of the total DVD volume entered at automation letter rates. If you are unable to supply a specific percentage, please provide the most precise range of percentages that you can provide.
- (c) Please produce all data, studies and analyses on which your answers to parts (a) and (b) rely.

RESPONSE:

(a) Confirmed that the Postal Service was referring to mailers entered by Netflix and Blockbuster.

(b)-(c) Please see the response to GFL/USPS-17(a). Available data as to the specific percentages of the amount of mail, inbound and outbound, that is processed in the automation letterstream with respect to Netflix and Blockbuster are set forth in the Christensen study and the OIG study. The Postal Service was referring to the percentages in those studies, and in particular to the percentages for the outbound processing of Netflix in the OIG and Christensen studies, and the outbound and inbound processing of Blockbuster in the Christensen study. Furthermore, this data also shows that a not insignificant amount of return Netflix mail is being processed on automation. The Postal Service expects that the amount of manual processing of Netflix mail is likely at least as large as was set forth in the OIG Report, though no specific percentages are available. With respect to Blockbuster, relatively recent changes to the postage

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payment method for Blockbuster should have increased the percentage of Blockbuster mail (that is returned through the letters mailstream rather than to Blockbuster stores) being run on automation relative to manually, though no specific percentage is available.

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GFL/USPS-20. Please produce all available data, studies and analyses concerning the following measures of the service provided by the Postal Service to DVD mailers:

- (a) The extent of manual culling and priority manual processing.
- (b) The extent of automated letter processing.
- (c) The rate of DVD breakage.
- (d) Any other dimension of the quality of mail service.

This request encompasses the service provided to any individual DVD rental company, any group of DVD rental companies, or the entire DVD rental industry. The time periods covered by this request are: (a) the period since November 2007; (b) any sub-period of the post-November 2007 period for which data are available; and (c) the last fiscal year before November 2007 for which data are available.

RESPONSE:

(a)-(b) Available data are provided in the OIG Report and the Christensen study.

See also the response to GFL/USPS-17 and 19.

(c) Extensive data concerning breakage of Netflix return pieces are available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions. The Postal Service does not receive comparable data as to breakage from Blockbuster with regard to its return leg. Available breakage data concerning the Blockbuster return leg is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

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GFL/USPS-22. Please produce all studies, analyses and similar documents created since January 1, 2007, that concern the relative importance of “getting all mail processed during the available window so as to meet service standards” (USPS Answer ¶ 35)—versus minimizing DVD breakage or complying with the requests of large DVD rental companies—as a cause of the manual processing of inbound letter-rated DVDs.

RESPONSE:

The Postal Service has no studies or analyses specifically addressing the issue of service standards and return DVD mail. However, as a general matter, Headquarters constantly communicates to the field the importance of processing the mail quickly and efficiently so as to meet service standards. For instance, webinars with field management is conducted every several weeks, with a topic of discussion often being the achievement of service standards.

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GFL/USPS-23. This question refers to the last sentence of the first complete paragraph on page 23 of the Postal Service's Answer filed on May 26, 2009, which states that "Official policy is not to handle such inbound pieces [i.e., letter size DVD mailpieces] manually, although some of it is handled that way as previously explained."

- (a) Please define the meaning of the qualifier "official" as it is used in the sentence.
- (b) Please produce all documents that establish an official policy "not to handle such inbound pieces manually."
- (c) When did Postal Service headquarters first become aware that, notwithstanding the "official policy," inbound letter-rated DVD mailers continue to be processed manually?
- (d) What steps, if any, has the Postal Service taken since then to bring actual operating practices in the field into compliance with the referenced "official policy"?
- (e) Please produce documents sufficient to verify your responses to parts (c) and (d).

RESPONSE:

- (a) The term is meant to denote "Headquarters."

- (b) There is no official Headquarters policy directing the field to process return DVD mail in manual or automated processing. As such, there are no documents "establishing" that policy.

- (c) Postal Service Headquarters has been aware since at least 2003 that inbound DVD mailers for Netflix were being processed manually.

- (d) No steps have been taken with respect to return DVD mail, because no official policy exists. Headquarters has instead allowed field officials to determine the most efficient method (automated versus manual) for handling these pieces.

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(e) Documents demonstrating knowledge by Headquarters officials of manual processing in the field are available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions. The lack of an official Headquarters policy regarding the automated or manual handling of Netflix mail is referenced in documents that are available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

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GFL/USPS-24. This question refers to Paragraph 81 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 81 contains the following contention by the Postal Service: "[M]ail processing decisions concerning the automated or manual handling of Netflix DVD return mail are made locally based on determinations as to what makes the best sense in the local mail processing environment, and processing decisions to remove Netflix mail from automated operations ensure the overall efficiency of mail processing operations, based on the characteristics of Netflix mail (such as the density of its volume)."

(a) Please produce all documents issued by Postal Service headquarters officials (or other employees or groups with national authority) since January 2007 (or issued before that date but maintained in effect for any period since then) that authorize "mail processing decisions concerning the automated or manual handling of Netflix DVD return mail" to be "made locally."

(b) Please produce all documents issued by Postal Service headquarters officials (or other employees or groups with national authority) since January 2007 (or issued before that date but maintained in effect for any period since then) directing local, district or area officials to make "mail processing decisions concerning the automated or manual handling of Netflix DVD return mail" so as to "ensure the overall efficiency of mail processing operations, based on the characteristics of Netflix mail (such as the density of its volume)."

(c) Has the Postal Service provided local, district or area officials with any standards, instructions or guidance to assist those officials in promoting the "overall efficiency of mail processing operations" when choosing between "automated" and "manual handling of Netflix DVD return mail"? If your answer is anything but an unqualified negative, please produce documentation of the standards, instructions and guidance.

(d) Has the Postal Service performed any studies, analyses, surveys or other inquiries to determine since January 2007 whether the choices made by local, district or area officials between the "automated" and "manual handling of Netflix DVD return mail" in fact are promoting the "overall efficiency of mail processing operations"? If your answer is anything but an unqualified negative, please produce all documentation of those studies, analyses, surveys and other inquiries, and the results thereby obtained.

RESPONSE:

(a)-(c) See the response to GFL/USPS-23. Headquarters has not issued a national policy concerning the automated or manual processing of Netflix return mail. Because there is no nationally dictated policy, Headquarters has not issued any such documents to the field. The lack of a national policy by definition leads to local decision-making as to whether to manually process this mail.

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(d) Headquarters has not conducted any specific studies on this issue. The Postal Service has begun an effort to study ways to improve handling and reduce breakage, but no results have been obtained. This documentation is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

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GFL/USPS-25. This question refers to Paragraph 86 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 86 contains the following contention by the Postal Service: "Headquarters policy is to allow local officials to determine whether to process Netflix DVD returns on processing equipment or manually."

(a) Please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar communications issued from Postal Service headquarters officials (or other employees or groups with national authority) to local, district or area officials since January 1, 2007 (or issued before that date but maintained in effect for any period since then) on the degree of discretion possessed by those local, district or area officials in "determin[ing] whether to process Netflix DVD returns on processing equipment or manually."

(b) Please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar communications issued from Postal Service headquarters officials (or other employees or groups with national authority) to local, district or area officials since January 1, 2007 (or issued before that date but maintained in effect for any period since then) stating the criteria (if any) to be used by those local, district or area officials in "determin[ing] whether to process Netflix DVD returns on processing equipment or manually."

(c) Please produce all studies, reports or analyses issued by Postal Service headquarters officials (or other employees or groups with national authority) since January 1, 2007, concerning the extent to which local, district or area officials are in fact free to "determine whether to process Netflix DVD returns on processing equipment or manually."

RESPONSE:

(a)-(b) Headquarters has not issued any directives or SOPs to the field directing them to manually cull return Netflix mail, or process such mail in automation, or providing any criteria in which to make that decision. As such, field officials have discretion to determine the most efficient processing approach. See also the response to GFL/USPS-23.

(c) Documents referencing the lack of a Headquarters policy are available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

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GFL/USPS-26. Please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar communications issued by Postal Service **Area** offices to District, local or other subordinate employees since January 1, 2007 (or issued before that date but maintained in effect for any period since then), concerning:

- (a) Whether (and under what criteria) Netflix DVD return mail should be processed on automated processing equipment vs. manually.
- (b) Whether (and under what criteria) Netflix DVD return mail should be culled or otherwise diverted from the automated mail stream.
- (c) Whether (and under what criteria) the DVD return mail of other DVD rental companies should be processed on automated processing equipment vs. manually.
- (d) Whether (and under what criteria) the DVD return mail of other DVD rental companies should be culled or otherwise diverted from the automated mail stream.

RESPONSE:

Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

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GFL/USPS-27. Please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar documents issued by Postal Service ***District*** offices to local or other subordinate employees since January 1, 2007 (or issued before that date but maintained in effect for any period since then), concerning:

(a) Whether (and under what criteria) Netflix DVD return mailers should be processed on automated processing equipment vs. manually.

(b) Whether (and under what criteria) Netflix DVD return mailers should be culled or otherwise diverted from the automated mail stream.

(c) Whether (and under what criteria) the DVD return mailers of other DVD rental companies should be processed on automated processing equipment vs. manually.

(d) Whether (and under what criteria) the DVD return mailers of other DVD rental companies should be culled or otherwise diverted from the automated mail stream.

RESPONSE:

Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

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GFL/USPS-28. What percentage of Postal Service retail facilities have mail slots designated for members of the public to deposit:

- (a) Netflix DVD mailers?
- (b) Blockbuster DVD mailers?
- (c) The DVD mailers of any DVD rental company?

RESPONSE:

(a)-(c) All post offices, stations, and branches are required to have lobby drops available for the public to deposit mail. The types of mail deposited by the public could include DVD mailers belonging to any company. With respect to any mail drops that are dedicated to the mail of a single DVD mailer, no such data are available. To the extent that any such dedicated mail slots are, or were, established for Netflix at the initiative of the local office, that would be against current Headquarters policy, as detailed in the attached Retail Digest.



Retail Digest
Bi-weekly Messages from USPS Retail
May 4, 2007

Message Category	Program / Office	Message
Action Item	Vending	<p align="center">Vending Signage Dollar Coin Acceptance</p> <p>Public Law 109-145, Presidential Dollar Coin Act, requires all vending machines on federal property to accept and dispense dollar coins effective February 2007. Signage must be placed on each vending machine to indicate that the machine accepts and dispenses dollar coins. This sign (Label 156) must be placed on all of the following vending machine models that are located in Post Offices and on Federal property:</p> <ul style="list-style-type: none"> • PSM 22 (A&B) • PBSM 624 (A&B) • PCM 1625B <p><u>District Retail Office Action Item</u></p> <ul style="list-style-type: none"> <input type="checkbox"/> See the attachment entitled Vending Signage Instructions for step-by-step instructions for <u>District Offices</u>. <input type="checkbox"/> Order, distribute and ensure Label 156 is posted by July 1, 2007. This action item is for the District Retail Office ONLY. <p>Post Offices should read the attachment entitled Vending Signage Instructions for important notices.</p>
Action Required	IRT	<p align="center">IRT Procedures for Latest Rate Changes</p> <p>The USPS Governors approved a lower Priority Mail Flat Rate Box price (from \$9.15 to \$8.95) and added a new 17-cent First-Class Mail surcharge for all nonmachinable letters effective May 14. Due to these changes, IRTs must update version 67 with version 68 which is due to ship to IRT Coordinators May 11. Until then, Retail Associates must follow the procedures below:</p> <p><u>IRT Priority Flat Rate Box Key [PRIOR INT L F R BOX]</u></p> <ul style="list-style-type: none"> <input type="checkbox"/> Error correct \$-0.20 by selecting the miscellaneous postage [MISC POSTAGE) key. The IRT will display \$9.15, here are the steps to reduce the PVI amount to \$8.95: <ol style="list-style-type: none"> 1. Select <Misc. Postage> 2. Enter 0.20 3. Select <Error Correct> 4. Press <Enter> <p><u>Nonmachinable Surcharge Key [OVERSIZE SURCHARGE]</u></p> <ul style="list-style-type: none"> <input type="checkbox"/> The surcharge [OVERSIZE SURCHARGE] key cannot be used to apply nonmachinable surcharges to letters above 1 ounce. To apply the \$0.17 nonmachinable surcharge to letters up to 3.5 ounces: <ol style="list-style-type: none"> 1. Select <Misc. Postage> 2. Enter 0.17 3. Press <Enter> <p>IRT Offices must use this temporary procedure until IRTs are updated to version 68.</p>

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Urgent – Reminder: Reminder or update to an urgent message.

Action Required: Time sensitive, requires response by given date.

Need to Know: Standard information that impacts office.

As Information: General info that may improve office operations or sales.

<p>Action Item</p>	<p>Retail Standardization</p>	<p style="text-align: center;">Netflix Mail Drop</p> <p>In an effort to accommodate Netflix mail, some offices have created special mail drops and signage for Netflix returns. This is <u>not</u> an authorized use of mail drop slots and it has legal ramifications for the Postal Service.</p> <p>Action Item:</p> <p><input type="checkbox"/> ALL Post Offices that have implemented Netflix return mail slots must remove the signage <u>immediately</u>.</p>
<p>Need to Know</p>	<p>Finance / Retail Operations</p>	<p style="text-align: center;">Reconciling POS and ADM Employee Items</p> <p>A new procedure has been implemented to address the discrepancies between the POS Unresolved Employee Items module and the ADM Employee Item Report.</p> <p>See the attached document entitled, Finance Procedures for a step-by-step procedure for reconciling the POS and ADM discrepancy.</p> <p>Please contact Robert Torres at robert.torres@usps.gov with questions regarding the procedures.</p>
<p>Need to Know</p>	<p>POP Signage</p>	<p style="text-align: center;">Rate Change Brochure</p> <p>Please be aware that the Rate Change Brochure designed to be placed in the lobby for customers features a price of \$9.15 for Priority Mail Flat Rate Box. On May 2, the Governors accepted the decision of the Postal Regulatory Commission (PRC) to modify its earlier rate case recommendations—lowering the price of the Priority Mail Flat-Rate Box to \$8.95.</p> <p>Due to the large volume of brochures printed, they will not be destroyed and re-printed. Offices are asked to make customers aware of the correct \$8.95 price.</p>
<p>Need to Know</p>	<p>Hazardous Materials Program / Retail Operations</p>	<p style="text-align: center;">HAZMAT Staging Area Service Talk</p> <p>The manager of each facility is required to create and stock a HAZMAT staging area as per the applicable (Delivery, Processing, Customer Service, or Retail) SOP. The SOPs can be found on the Aviation Mail Security website http://blue.usps.gov/site/wcm/connect/network_operations/logistics_and_processing/ams.</p> <p>The site also contains a HAZMAT compliance review sheet to facilitate a staging area self-assessment and to ensure compliance with the requirements set forth in the SOP. Ordering information for required materials is on the AVSEC website.</p> <p>See the document attachment entitled, Service Talk_AVSEC HAZMAT for details.</p>
<p>Need to Know</p>	<p>Retail Standardization</p>	<p style="text-align: center;">NALC Food Drive Collection Containers</p> <p>USPS cannot officially condone the collection of any items for charitable donation in our lobbies under POM section 124.54a. Although this may have been done in the past, longstanding Postal regulations prohibit this activity.</p>

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<p style="text-align: center;">Need to Know</p>	<p style="text-align: center;">Vending</p>	<p style="text-align: center;">Two Purchase Choices for PSM 53</p> <p>There has been a change in the postage offered in PSM 53 single stamp machines. The PSM 53 does not accept or dispense pennies, so it is not possible for customers to use exact coinage to purchase the new 41-cent stamp or dispense change from a 45-cent transaction. The minimum transaction of 45 cents will result in the purchase of a 41-cent stamp and four 1-cent stamps.</p> <p>A decision to fill only two of the vend positions has been made. The third vend should remain 'vacant'. The machines should be programmed as follows:</p> <ul style="list-style-type: none"> • [A1] - First vend: Set to sell one \$0.41 stamp and four penny stamps for \$0.45. • [A2] - Second vend: Set to sell two, three or four \$0.41 stamps plus the corresponding penny stamps based on local demand. • [A3] - Third vend: Keep empty and place blank black Label 223. The switches will be turned off in this vend. A slip of paper will have to be placed under the "sold-out eye" so that machine does not indicate that product is sold out. <p>For complete details and instructions for changing the PSM 53 C Mod and 53 D as well as the new Label 223 see website: http://eagnmmsg10d/VFO/vfo_2007RateCase.htm</p>
<p style="text-align: center;">Need to Know</p>	<p style="text-align: center;">Vending</p>	<p style="text-align: center;">Delivery of the Electronic Scales (Triner Fan Scale Replacement)</p> <p>The electronic scales that are replacing the Triner Fan Scales are scheduled to be shipped only to offices that appear on the Electronic Scales lists located at http://blue.usps.gov/delret/L4RetSrvEqp_Vending.htm. Check the right column under "Projects" and select "Electronic Scales" to access the file.</p> <p>Offices are color-coded to identify one of two phases during which the scales will be shipped:</p> <ul style="list-style-type: none"> • Phase One (all offices in black font) are offices that were on the list when the contract was issued. Shipments began April 27 and arrival expected by May 8. • Phase Two (all offices in red or purple font) are offices on the list that were added to the list after the contract was issued. Shipments began May 2 and arrival expected by May 17. <p>If after the expected arrival date, scales are not received, please send an email to Deborah.L.Gyaki@USPS.gov and she will initiate tracking procedures. Please do not call the Pitney Bowes Help Line as they do not have shipping information.</p> <p>Field Purchased Scales:</p> <p>Scales that were ordered/funded by offices are due to begin shipping May 15 with an estimated delivery the week of June 4. If after this date scales are not received, please email Phyllis.R.Edmondson@USPS.gov. Please do not call the Pitney Bowes Help Line as they do not have shipping information.</p> <p>DO NOT Call Pitney Bowes for shipping information.</p>

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<p style="text-align: center;">Need to Know</p>	<p style="text-align: center;">Vending</p>	<p style="text-align: center;">Make-up Stamps Packages for PBSM 624 and PCM 1625</p> <p>The make-up stamp packages should have gone on sale in vending machines on April 30. Packaging began on the 1-cent make up stamp before the final make-up rate was established due to the time needed to package stamps.</p> <p>Only the PBSM 624s and PCM 1625 should be selling make-up stamps. There are currently two products available for your customers:</p> <ul style="list-style-type: none"> • Item # 314100 - \$0.50 = fifty of the 1-cent American Kestrel stamps • Item # 315800 - \$0.40 = twenty of the 1-cent Navajo Jewelry stamps (2-cent packages left-over from 2006) <p>Note: If the \$0.40 [2006] Navajo Jewelry stamp (Item # 315800) is loaded in a PCM 1625, two packages must be loaded per vend to over-come the required 50-cent transaction amount on that machine. Packaging has started on the \$0.60 [2007] Navajo Jewelry stamp (Item # 315900) which should arrive in SDOs mid-May. Use the appropriate product identifier for these make-up stamps which can be found at: http://eagmnmsg10d:8082/prodid/main_RateCase2007.jsp</p>
<p style="text-align: center;">As Information</p>	<p style="text-align: center;">Finance / Retail Operations</p>	<p style="text-align: center;">POS Trust Account Off-Line Transaction Log/Report</p> <p>All POS offices with the PostalOne interface must review the Trust Account Off-Line Transaction Log/Report daily to ensure all "pending" transactions are resolved and posted in the PostalOne system. The Off-Line Log must be reviewed and resolutions must be in place no later than the next business day.</p> <p>Two reference documents are available on the POS website to assist with this procedure:</p> <ul style="list-style-type: none"> • PostalOne New Functionality Guide - http://eagmnmsg10d/posone/files/training/ncr/PostalOne%20NFG%20v1.02.pdf • PostalOne Quick Reference Guide - http://eagmnmsg10d/posone/files/training/ncr/PostalOne%20QRG%20v1.10.pdf <p>See the attached document entitled, Finance Procedures for details on the Trust Account Offline Transaction Log Report and on contacting the Help Desk for assistance.</p>
<p style="text-align: center;">As Information</p>	<p style="text-align: center;">OLRP</p>	<p style="text-align: center;">OLRP Products</p> <p>The Official Licensed Retail Products (OLRP) program product line has been condensed in an effort to make the program more profitable. The list of available products can be found in Ebuy by following the instructions below:</p> <ul style="list-style-type: none"> • Log into Ebuy • Select "Catalogs" • Select "Retail Merchandise Center" • Select "Official Licensed Retail Products" <p>Items can be found by choosing the product by category or by entering the item number. Please see a courtesy copy of the product list in the attachment entitled, OLRP Product List.</p>

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As Information: General info that may improve office operations or sales.

As Information	OLRP	<p style="text-align: center;">Spider Man</p> <p>A new Spiderman plush (item # 23148217) is now available for purchase on eBuy through the Official Licensed Retail Products (OLRP) program. The unit price is \$9.25 and the retail price is \$12.99. Place your orders now in conjunction with the movie debut and in anticipation of the July unveiling of the Marvel Super Heroes stamp pane.</p> <p>Place your orders through ebuy at http://ebuy/jsp/co/Login.jsp.</p>
Notes:		

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Need to Know: Standard information that impacts office.

As Information: General info that may improve office operations or sales.

Vending Signage Dollar Coin Acceptance

To District and Post Offices:

Public Law 109-145, Presidential Dollar Coin Act, requires all vending machines on federal property to accept and dispense dollar coins effective February 2007. Signage must be placed on each vending machine to indicate that the machine accepts and dispenses dollar coins. This small sign (Label 156) must be placed on all of the following vending machine models that are located in Post Offices and on Federal property:

- **PSM 22 (A&B)**
- **PBSM 624 (A&B)**
- **PCM 1625B**

Although many machines currently have signage indicating that the equipment accepts and dispenses dollar coins, USPS attorneys have advised USPS Retail to place Label 156 on these machines.

Only the District Retail Offices will order these labels. The District Retail Offices will also distribute the labels to Post Offices and SSPC Techs to place on the machines. The label needs to be placed near the bill validator by July 1, 2007 to comply with the new law.

For the District Retail Offices Only:

Please be aware that Label 156 will be available at Topeka Supply Center beginning May 1, 2007.

Action Items Due July 1, 2007

Determine how many vending machines you have in Post Offices and on Federal Property (count only the PSM 22 (A&B), PBSM 624 (A&B) and PCM 1625B)

Signs come in packages of 25 signs – round up your quantity to a multiple of 25.

Order your required packages from Topeka –

Label 156 February 2007

PSN 7690-10-000-0317

25 labels to a package

There is no charge for this label

Distribute the Label 156 to SSPC techs and Post Offices with PSM 22 (A&B), PBSM 624 (A&B) and PCM 1625B and tell them to place the label near the bill validator. Only place the label on the models listed above.

Completion Date: July 1, 2007

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FINANCE PROCEDURES

Reconciling POS and ADM Employee Items

The following procedure has been implemented to address the discrepancies between the POS Unresolved Employee Items module and the ADM Employee Item Report.

1. All POS offices were given 14 business days to complete posting unresolved employee items in the one-time utility in POS (in early May), the detail items from the POS will be loaded to ADM via a special JV process (JV 411.9).
2. Prior to processing of JV 411.9, HQ will provide AAMs with a spreadsheet list of the expense by Unit Finance Number.
3. At the time of the special JV, discrepancies between the balance in ADM and total of the individual employee items from POS will be expensed to the Unit Finance Number. The expense will carry the Reason code 25 - Employee Item Utility Error.
4. POS offices must use Reason code 25 if they need to reverse the HQ initiated expense as a follow-up resolution. Reason code 25 will be available in POS only, effective April 21.
5. If the expense was due to POS offices not completing the detail employee items in the one-time only utility, follow the procedures listed below.
 - a. For AIC 754 and AIC 755 - Recreate items from the front office of POS and offset with AIC 247
 - b. For AIC 057, AIC 068, AIC 764 or AIC 767 - Do not recreate them from the front office. These items will change the stamp stock accountability or cash accountability. Maintain a manual log (Form 25) of these items until they are cleared.
6. The shortages on the manual log can be cleared by collecting the amount from the employee or establishing an employee receivable (Form 1902 process). Overages can be moved to a revenue account, AIC 123. The accounting entries are:
 - a. Collection from employee - AIC 247/752 (Reason code 25)
 - b. Employee receivable - AIC 247/636 (Reason code 25)
 - c. Overage to revenue - AIC 123/647 (Reason code 25)
7. It is critical that POS offices keep the manual record of these items in order to avoid potential difficulties associated with the subsequent collection of employee debt through the debt collection process.
8. POS offices will have until the end of FY 2007 to resolve all employee items still remaining on a manual log after HQ expense is processed.

Please contact Robert Torres (robert.torres@usps.gov) if you have any questions regarding the above procedures.

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Need to Know: Standard information that impacts office.

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POS Trust Account Off-Line Transaction Log/Report

All POS offices with PostalOne Interface must review the Trust Account Off-Line Transaction Log/Report daily to ensure all "pending" transactions are resolved and posted in the PostalOne system.

There are two reference documents on the POS website;

- ◆ PostalOne New Functionality Guide - <http://eagnmmsg10d/posone/files/training/ncr/PostalOne%20NFG%20v1.02.pdf>
- ◆ PostalOne Quick Reference Guide - <http://eagnmmsg10d/posone/files/training/ncr/PostalOne%20QRG%20v1.10.pdf>

The following is an excerpt from the PostalOne! Quick Reference Guide

5.0 Trust Account Offline Transaction Log Report

All deposits and reversals completed in offline mode are recorded in the Trust Account Offline Transaction Log Report.

The Trust Account Offline Transaction Log Report is available to view or print on demand in the Front Office end of day reports ([Clerk Services], <Administrative Functions>, <Reports>, and then <Trust Account Offline Transaction Log Report>). This report is also available in Back Office.

5.1 Offline Transaction Log Status Codes

In the Trust Account Offline Transaction Log Report, you will see "codes" for deposits and reversals completed in offline mode. Here are some quick definitions of these codes:

- 0** = The deposit transaction has not been confirmed successfully in PostalOne!.
- 1** = The deposit transaction was submitted in unattended mode and cannot be confirmed on PostalOne! due to a Permit Number or Permit Type input error in POS ONE.
- 2** = Pending Reversal of confirmed deposit and fee payment transactions.
- 3** = The reversal of a fee payment transaction submitted to PostalOne! in unattended mode returned a response from PostalOne! that the fee payment cannot be reversed due to customer use (mailing has been performed against the fee).
- 4** = The account is canceled in PostalOne!.
- 5** = PostalOne! returns unknown error codes (error codes other than 1-8). No action is required by the RA.
- 6** = There is no Finance number match. The Finance number sent from POS ONE is not found in PostalOne!

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SERVICE TALK – STAGING AREA

FOR POSTMASTERS, SUPERVISORS & MANAGERS

The United States Postal Service (USPS) is dedicated to providing a safe working environment for our employees, safeguarding the public, and maintaining the reliability and security of the mail. Over the past several years, the Aviation Mail Security/Hazardous Materials (AVSEC/HAZMAT) group has issued standard operating procedures (SOPs) to assist employees in the acceptance, handling, processing and transporting of mail containing or believed to contain hazardous materials.

Included in the SOPs is a requirement to establish a HAZMAT staging area where hazardous materials can be isolated to ensure proper handling. The staging area must be in a portion of the facility away from traffic flows where hazardous materials will be protected from accidental damage. The HAZMAT staging area must not be located near break rooms, cafeterias, air intakes, or battery charging rooms. The HAZMAT staging area must be equipped with all program materials as defined in the SOPs. Having a properly set up and equipped HAZMAT staging area is crucial to the safe handling of hazardous materials.

The manager of each facility is required to establish and stock a HAZMAT staging area as per the applicable (Delivery, Processing, Customer Service, or Retail) SOP. The SOPs can be found on the Aviation Mail Security website http://blue.usps.gov/site/wcm/connect/network_operations/logistics_and_processing/ams

You will also find a HAZMAT compliance review sheet that will allow you to perform a self-assessment of your HAZMAT staging area to ensure it complies with the requirements set forth in the SOP. Ordering information for required materials is on the AVSEC website.

So do the right thing and perform a HAZMAT review of your office to ensure your facility is a safe facility!

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Action Required: Time sensitive, requires response by given date.

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RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-30. What percentage of Postal Service mail processing facilities have tubs or other containers that are used to hold:

- (a) Netflix DVD mailers that have been culled from the automated mailstream?
- (b) Blockbuster DVD mailers that have been culled from the automated mailstream?
- (c) The DVD mailers of any DVD rental company that have been culled from the automated mailstream?

RESPONSE:

Whenever culling is performed on any class or type of mail, containers are provided to hold this mail. An exact percentage of facilities where culling of DVD envelopes occurs is not available. When DVD culling occurs, it is normally early in the collection mail process. The Postal Service would expect to find a container provided specifically for culled DVD envelopes.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-34. Please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar communications issued by the Postal Service to limit the access of GameFly to USPS personnel or facilities after the filing of GameFly's complaint in this case.

RESPONSE:

See the attached letter, which directed that any request by GameFly to access postal facilities be routed through Headquarters officials. This will be in effect during the pendency of this complaint proceeding, and was designed to ensure that discovery be conducted through the established Commission processes.



June 11, 2009

VICE PRESIDENTS, AREA OPERATIONS

SUBJECT: GameFly Complaint

GameFly has initiated litigation against the Postal Service by filing a complaint at the Postal Regulatory Commission regarding the handling and processing of its mailpieces. In short, GameFly complains its flat-size mail, containing game DVDs, does not receive the same manual processing as NetFlix and Blockbuster's letter-size mail containing movie DVDs.

I also understand GameFly representatives are reaching out to local plant, district, and area personnel in efforts to resolve service related issues with mail containing its game disks. While we encourage local personnel to address service issues raised by customers, our challenge is to respond to GameFly's inquiries and resolve what we can without compromising the Postal Service's legal position.

Given the nature of the complaint and its juxtaposition with our responsibility to provide consistent customer support, we request that all communication with GameFly flow through the Business Service Network (BSN). Any service or other inquiries received directly from GameFly staff should be directed to the BSN for action. Doreen Sanders, Los Angeles BSN representative, is equipped to handle GameFly inquiries and will utilize standard BSN processes for problem resolution with local BSN representatives.

GameFly service inquiries frequently include requests for access to plant floors with the intention of informing postal personnel how GameFly prefers that its mail be processed. Since that very processing lies at the heart of the complaint, our attorneys have advised that all requests for access to mail processing operations be referred to them directly. The contact attorney's handling this case are Ken Hollies, knollies@usps.gov, at 202-268-3083 and Keith Weidner, Keith.E.Weidner@usps.gov, at 202-268-6252. You may also contact Ken or Keith should you require additional legal guidance on GameFly inquiries.

Please ensure you communicate to your Executives that all communications relative to GameFly must be directed either to the BSN, or to our attorneys, as specified above.

Thank you for following up on this matter.


William P. Galligan

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-35. Please produce copies of all studies of DVD mail or DVD mailers performed by Christensen Associates or any other consultant or contractor for the Postal Service since January 1, 2005. For each study produced, please also produce its workpapers and supporting documentation.

RESPONSE:

See the response to GFL/USPS-36.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-36. Please produce a copy of the study entitled *United States Postal Service (USPS) Mail Characteristics of DVD-by-Mail.*, as well as all workpapers, communications and other documents that relate to the study. (This study is cited in OIG Audit Report No. MS-AR-08-001, *Review of Postal Service First-Class Permit Reply Mail* (November 8, 2007).)

RESPONSE:

The referenced study was conducted by Christensen Associates. Documents and communications relating to the Christensen study are available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-37. The Postal Service's 2007 Update to the Strategic Transformation Plan stated: "The Postal Service is also exploring a round-trip product designed for other mail applications. The principal market for this product consists of mailers sending disc-based media rentals, such as movies, audio books, and computer games. Customers will benefit from easy payment options, and the Postal Service will benefit from lower handling and accounting costs for the incoming return pieces."

- (a) Please describe the terms of the potential "round-trip product" to which the quoted statement referred.
- (b) Please produce all studies, reports, analyses and similar documents created since January 1, 2005, concerning the "round-trip product."
- (c) Please explain why the Postal Service decided not to adopt the product.
- (d) Please produce documents sufficient to verify your response to part (c).

RESPONSE:

(a) The Postal Service did not develop a firm set of "terms" for a round-trip product. However, issues such as packaging design, preparation and entry requirements, weight limits, and ancillary data services were considered.

(b) Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

(c) The Postal Service was unable to develop a product that simultaneously met operational needs, satisfied product management requirements, and fit within the existing pricing and classification structure.

(d) Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-39. Please produce copies of all documents produced by the Postal Service since January 1, 2005, in response to any request under the Freedom of Information Act for any information relating to:

- (a) The processing or handling of DVD mail.
- (b) The automation compatibility of DVD mailers.
- (c) The machinability of DVD mailers.
- (d) DVD breakage.
- (e) Rates, fees, prices, classifications or preparation requirements for DVD mail.
- (f) Customer-specific rate or service arrangements between the Postal Service and any DVD rental company.

RESPONSE:

The documents produced by the Postal Service under such FOIA requests are attached.

SUSAN M. PLONKEY
VICE PRESIDENT, CUSTOMER SERVICE



March 7, 2007

Mr. Reed Hastings
Chairman, President and
Chief Executive Officer
Netflix, Inc.
100 Winchester Circle
Los Gatos, CA 95032-1815

Dear Mr. Hastings:

I am pleased to inform you that Netflix, Inc. has been selected by Nicholas F. Barranca, Vice President, Product Development, to receive the 2007 Corporate Business Achievement award from the United States Postal Service. This award will be presented to you at the National Postal Forum Awards Luncheon on Monday, March 26, at 12:00 noon, in the Grand Ballroom of the Washington, D.C., Convention Center.

This award is a tribute to you and to Netflix, Inc. for having recognized the vital importance of innovation, teamwork, communication, and customer satisfaction.

Please arrive at the Grand Ballroom by 9:00 a.m. on Monday, March 26, to participate in a rehearsal for the award presentation. We will follow-up with additional information to make this event memorable for you.

We look forward to seeing you in Washington, D.C., and presenting Netflix, Inc. with this prestigious United States Postal Service award.

Sincerely,

A handwritten signature in cursive script that reads "Susan M. Plonkey".

Susan M. Plonkey

cc: Nicholas F. Barranca, Vice President, Product Development
William McComb, Director, Netflix, Inc.



United States Postal Service

"AUTOMATION OF DISC MEDIA IN THE MAIL"

When: December 12, 2006, 8:30 AM – 12:30 PM
Where: Loews L'Enfant Plaza, the Quorum Room

8:30 – 9:00	Continental Breakfast	All
9:00 – 9:15	Opening Remarks	Anita Bizzotto, Executive Vice-President and Chief Marketing Officer, USPS
9:15 – 9:45	Engineering Overview	George Laws, Manager, Letter Technology Brent Raney, Manager, Tech. Development
9:45 – 10:15	AFCS Improvements	George Laws/Brent Raney
10:15 – 10:30	Break	All
10:30 – 11:00	ATR Study	Bill McComb, Senior Director, Postal Operations, Netflix, Inc.
11:00 – 12:00	Open Discussion	All
12:00 – 12:30	Lunch	All

Velda

Ex. 3, 4

Post Office: Note Mail Arrival Date & Time

8/1 3:40

Postage Statement — First-Class Mail and Priority Mail

Use this form for either First-Class Mail or Priority Mail. They may not be combined.

Mailer	Permit Holder's Name and Address and Email Address, If Any Netflix PO Box 4 49021 San Jose, CA 95161-9021	Telephone (408) 220-3119	Name and Address of Mailing Agent (If other than permit holder)	Telephone	Name and Address of Individual or Organization for Which Mailing Is Prepared (If other than permit holder)
	CAPS Cust. Ref. No. Customer No. Ex. 3, 4		M-1		

Mailing	Post Office of Mailing San Jose, CA	Processing Category Ex. 3, 4	Mailing Date 08/01/2007	Federal Agency Cost Code	Statement Seq. No.	No. & type of Containers Ex. 3, 4 Sacks
	Type of Postage Ex. 3, 4	Weight of a Single Piece Ex. 3, 4 pounds	Total Pieces Ex. 3, 4			1 ft. Letter Trays
	Permit # 71	For Mail Enclosed Within Another Class Ex. 3, 4	Total Weight Ex. 3, 4			

Postage	Parts Completed (Select all that apply) Ex. 3, 4	Total Postage (Add parts totals) Ex. 3, 4
	Rate at Which Postage Affixed (Check one) Ex. 3, 4	Ex. 3, 4 = Postage Affixed Ex. 3, 4
	Net Postage Due (Subtract postage affixed from total postage) Ex. 3, 4	
	For USPS Use Only: Additional Postage Payment (State reason) Ex. 3, 4	Ex. 3, 4
	For postage affixed add additional payment to net postage due; for permit imprint add additional payment to total postage. Total Adjusted Postage Affixed Ex. 3, 4	
Permit Imprint Only - Check One Ex. 3, 4 AIC 121 (First-Class Mail) PM: Report Total Postage in AIC: AIC 237 (Priority Mail)	Total Adjusted Postage Permit Imprint Ex. 3, 4	

The mailer's signature certifies acceptance of liability for and agreement to pay any revenue deficiencies assessed on this mailing, subject to appeal. If an agent signs this form, the agent certifies that he or she is authorized to sign on behalf of the mailer and that the mailer is bound by the certification and agrees to pay any deficiencies. In addition, agents may be liable for any deficiencies resulting from matters within their responsibility, knowledge, or control. The mailer hereby certifies that all information furnished on this form is accurate, truthful, and complete; that the mail and the supporting documentation comply with all postal standards and the mailing qualifies for the rates and fees claimed; and that the mailing does not contain any matter prohibited by law or postal regulation. I understand that anyone who furnishes false or misleading information on this form or who omits information requested on this form may be subject to criminal and/or civil penalties, including fines and imprisonment.

Privacy Notice: For information regarding our Privacy Policy visit www.usps.com.

Signature of Mailer or Agent	Printed Name of Mailer or Agent Signing Form WJEL ARAYA	Telephone (408) 220-3119
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USPS Use Only	Weight of a Single Piece Ex. 3, 4 pound	Are postage figures at left adjusted from mailer's entries? If yes, reason: Ex. 3, 4
	Total Pieces Ex. 3, 4	Ex. 3, 4
	Total Weight Ex. 3, 4	
	Total Postage Ex. 3, 4	
	Presort Verification Performed? (Check One) Ex. 3, 4	
I CERTIFY that this mailing has been inspected concerning: (1) eligibility for postage rates claimed; (2) proper preparation (and presort where required); (3) proper completion of postage statement; and (4) payment of annual fee (if required).		
Date Mailed/Notified Ex. 3, 4	Contact Ex. 3, 4	By (Initials) Ex. 3, 4
Verifying Employee's Signature	Verifying Employee's Name	Time AM PM



20

Automation Rates

Check box at left if rates are populated in this section.

Cards (eligible for card rate)		Rate	No. of Pieces	Total
A1	5-Digit	\$0.191	Ex. 3, 4	Ex. 3, 4
A2	3-Digit	0.204		
A3	AADC	0.208		
A4	Mixed AADC	0.220		

Letters		Rate	No. of Pieces	Total
A5	5-Digit	Ex. 3, 4	Ex. 3, 4	Ex. 3, 4
A6	3-Digit			
A7	AADC			
A8	Mixed AADC			
A9	Single-Piece From Standard Mail mailing			

Flats		Rate	No. of Pieces	Total
A10	5-Digit	Ex. 3, 4	Ex. 3, 4	Ex. 3, 4
A11	3-Digit			
A12	ADC			
A13	Mixed ADC			
A14	Single-Piece From Standard Mail mailing			

Part A Total **Ex. 3, 4**

Nonautomation Rates

Check box at left if rates are populated in this section

Cards (eligible for card rate)		Rate	No. of Pieces	Total
B1	Presorted	\$0.241	Ex. 3, 4	Ex. 3, 4
B2	Single-Piece	0.260		

Letters		Rate	No. of Pieces	Total
B3	Presorted	Ex. 3, 4	Ex. 3, 4	Ex. 3, 4
B4	Single-Piece			

Nonmachinable Letters		Rate	No. of Pieces	Total
B5	Presorted	Ex. 3, 4	Ex. 3, 4	Ex. 3, 4
B6	Single-Piece			
B7	Nonmachinable Surcharge* (for presorted letters)	0.170		
B8	Nonmachinable Surcharge* (for single-piece letters)	0.170		

*Only on FCM letters with one or more nonmachinable characteristics

Flats		Rate	No. of Pieces	Total
B9	Presorted	Ex. 3, 4	Ex. 3, 4	Ex. 3, 4
B10	Single-Piece			

Presorted Parcels		Rate	No. of Pieces	Total
B11	5-Digit	Ex. 3, 4	Ex. 3, 4	Ex. 3, 4
B12	3-Digit			
B13	ADC			
B14	Single-Piece/Mixed ADC			
B15	Parcel Surcharge	0.05		
B16	Single-Piece From Standard Mail mailing	Ex. 3, 4		

Permit Reply Mail		Rate	No. of Pieces	Total
B17	Single-Piece Letter (1 oz. or less)	\$0.410	Ex. 3, 4	Ex. 3, 4
B18	Single-Piece Letter (over 1 oz. to 3.5oz.)	Ex. 3, 4		
B19	Single-Piece Flat (1 oz. or less)	\$0.800		
B20	Single-Piece Flat (over 1 oz. to 13 oz.)	Ex. 3, 4		

Part B Total Ex. 3, 4



COPY

June 24, 2002

Mr. Tom Dillon
Vice President of Operations
Netflix
2219 Oakland Road
San Jose, CA 95131-1402

Dear Mr. Dillon:

This responds to your June 17 email message to Anita Bizzotto, U.S. Postal Service, Chief Marketing Officer, and George Laws, U.S. Postal Service, manager of Letter Mail Technology, about the automation-compatibility tests conducted on letter-size mailpieces containing DVDs that your company sent on May 22 to our Engineering Department. As a point of clarification, the tests indicated that the reusable mailpieces were automation-compatible when outbound and thus would be eligible for automation letter rates.

As reported in the June 11 letter from Mr. Laws (copy attached), the tests also established that the return pieces, although not completely automation-compatible, were machinable. The return pieces were, for example, able to make the turns on the delivery barcode sorter and the advanced facer canceler. Moreover, the samples did bend easily when subjected to a transport belt tension of 40 pounds around an 11-inch diameter turn without any apparent damage or sortation problems.

As a result, the return pieces tested would not be subject to the nonmachinable surcharge effective June 30, 2002, for mailpieces that must be handled manually. The determinations for the outbound processing and the inbound processing apply only to the samples submitted. If any changes are made to the design or construction of these mailpieces, they would have to be retested for machinability.

for Sherry Freda
Sherry Freda
Manager

Enclosure

cc: George Laws, manager, Letter Mail Technology

PC:MPS:Berger:Netflix0624

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-41. Please produce all studies, analyses, reports, internal reviews, memoranda, and similar documents created since January 1, 2005, by the Postal Service, any subordinate department or division of the Postal Service with national responsibilities (e.g., engineering, operations, marketing, pricing, Postal Inspection Service or Office of Inspector General), or any contractor or consultant to the Postal Service, relating to any of the following subjects:

- (a) DVD breakage.
- (b) The cause(s) of DVD breakage.
- (c) The actual rate of DVD breakage (for Netflix, any other DVD rental company, any group of DVD rental companies, or the DVD rental industry generally).
- (d) Trends in DVD breakage rates over time.
- (e) Possible methods of reducing or eliminating DVD breakage.

RESPONSE:

(a)-(b) Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

(c) DVD breakage rate data are provided by mailers. Available data is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

(d)-(e) Responsive information is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-42. This question refers to Paragraph 28 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 28 contains the following GameFly statement, which the Postal Service declined to join: "[T]he rate of breakage of DVDs in lightweight mailers, when processed on Postal Service automated letter process[ing] equipment, is substantial, and can be as high as five percent per return trip."

(a) What is the current rate of breakage of DVDs in lightweight mailers, when processed on Postal Service automated letter processing equipment?

(b) What is the current rate of breakage of return mailings of DVDs in lightweight mailers, when processed in Postal Service automated letter processing equipment?

(c) Please produce all data, studies and analyses supporting your response to parts (a) and (b).

RESPONSE:

(a)-(c) Data concerning current DVD breakage rates experienced by mailers are provided by mailers. Available data and studies are available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-43. This question concerns the last sentence of paragraph 16 of the Postal Service's Answer filed on May 26, 2009. In that paragraph, the Postal Service denied that "postal acceptance, processing and/or delivery is the proximate cause of all, a majority of, or a significant portion of overall DVD damage." Paragraph 16 of the Postal Service's Answer also suggested that DVD damage is (or may be) caused by other factors such as the brittleness or rigidity of the DVD, the design of the "mailing envelopes and/or insufficiently protective inserts; the degree of care (or lack thereof) exercised by Complainant's customers in handling or using DVDs obtained via the mail; or by Complainant's employees processing DVDs, preparing outgoing mailpieces or opening return mailpieces." Please produce all data, studies and analyses created since January 1, 2005, concerning:

- (a) The relative significance of each factor listed in paragraph 16 of the Postal Service's Answer as a cause of damage to DVDs.
- (b) The relative "brittleness" of GameFly's DVDs versus the DVDs of Netflix, Blockbuster and other DVD rental companies that are customers of the Postal Service.
- (c) The relative "rigidity" of GameFly's DVDs versus the DVDs of Netflix, Blockbuster and other DVD rental companies that are customers of the Postal Service.
- (d) The degree of protection afforded by GameFly's mailing envelopes and protective inserts versus the envelopes and inserts used by Netflix, Blockbuster and other DVD rental companies that are customers of the Postal Service.
- (e) The degree of care (or lack thereof) exercised by GameFly's customers in handling or using DVDs obtained via the mail, versus the degree of care exercised by the customers of Netflix, Blockbuster and other DVD rental companies that are customers of the Postal Service.
- (f) The degree of care (or lack thereof) exercised by GameFly's employees in processing DVDs, preparing outgoing mailpieces or opening return mailpieces, versus the degree of care exercised by the employees of Netflix, Blockbuster and other DVD rental companies that are customers of the Postal Service.

RESPONSE:

(a) Responsive information concerning this issue is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

(b)-(f) The Postal Service has no data or studies on these issues, beyond the general breakage data provided by mailers. Available data is available for inspection by

reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-44. This question concerns paragraph 32 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. In paragraph 32, the Postal Service contends that "some amount of the DVD breakage experienced by GameFly is due to mishandling by GameFly employees."

- (a) Please produce all data, studies and analyses that support this contention.
- (b) Please produce all other data, studies and analyses concerning the significance of the mishandling of DVDs by the employees of any DVD rental company as a cause of DVD breakage.
- (c) Please produce all other data, studies and analyses concerning the significance of the mishandling of DVDs by the employees of the DVD rental industry generally as a cause of DVD breakage.

(This question seeks responsive information created since January 1, 2005.)

RESPONSE:

- (a) The Postal Service has no data, studies, or analyses.

- (b) The Postal Service has no data, studies, or analyses addressing the significance of this issue.

- (c) The Postal Service has no data, studies, or analyses addressing the significance of this issue.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-48. This question refers to Paragraph 35 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts." Paragraph 35 contains the following contention by the Postal Service: "the occurrence of DVD breakage can depend on the number of 'rental cycles' an individual DVD has experienced (i.e., the number of times the DVD has been entered by a DVD mailer into the mail stream, processed on the outbound leg, delivered, handled by the DVD mailer's customer, mailed by the customer, and processed on the return leg)."

(a) Please produce all data, studies, analyses and other documents on which you rely in support of the quoted contention.

(b) The quoted statement identifies several components of the DVD "rental cycle." Does the Postal Service contend that any component of the DVD rental cycle other than automated letter processing on the return leg plays a significant role in weakening the resistance of a DVD to breakage during future rental cycles?

(c) If your response to part (b) is anything but an unqualified no, please produce all data, studies, analyses and other documents on which you rely.

RESPONSE:

(a) Responsive documents are available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

(b)-(c) The Postal Service does not deny that automated processing may be the cause of breakage of DVDs. However, the extent to which breakage can occur depends on more than simply automated processing. Further details are provided in a proprietary Netflix study that is available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-49. This question refers to Paragraph 37 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts." Paragraph 37 contains the following GameFly statement, which the Postal Service declined to join: "GameFly contends that the avoidance of automated letter processing of DVD return mailers by the Postal Service—with no change in the physical attributes of the DVD, its handling by the employees and customers of the DVD rental company, and the average number of mailing cycles per DVD—can reduce the average DVD breakage rate from approximately five percent per return trip to less than one percent per return trip."

(a) Please identify each element of the quoted statement with which the Postal Service is unwilling to agree.

(b) For each such element, please explain why the Postal Service is unwilling to agree with it.

(c) If the reasons stated in part (b) are based in whole or part on documents, please produce them.

(d) If the reasons stated in part (b) are based in whole or part on communications from Postal Service employees, please provide the name of each such employee; his or her job title, department or group, and work location at the time of the communication(s); and the substance of the communication.

RESPONSE:

(a)-(b) The Postal Service did not agree to this contention from GameFly because it has not studied whether that contention is correct.

(c) N/A

(d) Postal Service Engineering has noted that it does not have data necessary to endorse that contention.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-50. Please produce all data, studies or analyses created since January 1, 2005, concerning the effect on DVD breakage rates from bypassing the automated letter processing of DVD return mailers by the Postal Service.

RESPONSE:

Available analyses are available for inspection by reviewing parties upon the promulgation of protective conditions, and certification by reviewing parties of adherence to those conditions.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-51. This question refers to Paragraph 40 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 40 contains the following GameFly statement, which the Postal Service declined to join: "none of these means [alternative mailer designs tested by GameFly and the Postal Service] has achieved an acceptable rate of breakage at an acceptable cost."

(a) Please identify each reason for the Postal Service's unwillingness to stipulate to the quoted statement.

(b) Please produce all data, studies and analyses that you contend support each reason identified in part (a).

(c) For each alternative DVD mailer design that the Postal Service has tested since January 1, 2002, whether or not for or with a particular customer, please provide the physical specifications of the mailer design and all documents relating to the test results.

RESPONSE:

(a) The Postal Service did not join GameFly's contention because the term "acceptable" was not defined.

(b) N/A

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-52. Given the breakage rate of Netflix DVDs in reply mailers for which Netflix pays letter rates of postage, what breakage rate should other DVD rental companies be required to accept from the USPS for DVD reply mailers mailed at letter rates of postage?

RESPONSE:

The Postal Service does not know what breakage rates “other DVD rental companies” may consider acceptable for their DVD return mail. A DVD rental company that is similarly situated to Netflix in all respects could conceivably expect to have a comparable breakage rate.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-53. What is the maximum rate of postage that other DVD rental companies should accept paying to obtain the same breakage rate for DVD reply mailers that Netflix obtains by paying letter rates of postage?

RESPONSE:

The Postal Service does not know what “other DVD rental companies” may consider to be the “maximum rate of postage” that they should pay for their DVD return mail. A

DVD rental company that is similarly situated to Netflix in all respects could conceivably expect to have a comparable postage rate.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-54. This question refers to Paragraph 46 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 46 contains the following GameFly statement, which the Postal Service declined to join: "[S]imply paying the rates for flat-shaped First-Class Mail (with flats paying more postage than similar weight letters since implementation of the rates established in Docket No. R2006-1), and marking the mailers with warnings such as 'FIRST-CLASS MAIL FLAT' and 'PROCESS ON AFSM-100' were insufficient to avoid a high rate of breakage."

(a) Please identify each reason for the Postal Service's unwillingness to stipulate to the quoted statement.

(b) Please provide all data, studies and analyses that you contend support each reason identified in part (a).

(c) Do you contend that "simply paying the rates for flat-shaped First-Class Mail (with flats paying more postage than similar weight letters since implementation of the rates established in Docket No. R2006-1), and marking the mailers with warnings such as 'FIRST-CLASS MAIL FLAT' and 'PROCESS ON AFSM-100'"—but not including a protective insert in the mailer that is thick enough to cause its diversion from automated letter processing equipment—are sufficient to avoid a high rate of breakage?

(d) If your answer to part (c) is anything but an unqualified negative, please provide all data, studies and analyses on which you rely.

RESPONSE:

(a) The Postal Service declined to join GameFly's contention because the term "high" was not defined, and because it has not studied GameFly's historic breakage rate data.

(b) The Postal Service's decision not to join GameFly's contention was not based on any data or studies.

(c) The Postal Service has not made such a contention. Postal Service Engineering has not studied the need for a protective insert in the GameFly mailer.

(d) N/A

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-55. This question refers to Paragraph 47 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 47 contains the following GameFly statement, which the Postal Service declined to join: "[I]ncreasing the height of the mailer to eight inches, without a cardboard protective insert, did not reduce the breakage rate to acceptable levels."

(a) Please identify each reason for the Postal Service's unwillingness to stipulate to the quoted statement.

(b) Please provide all data, studies and analyses that you contend support each reason identified in part (a).

(c) Do you contend that increasing the height of a DVD mailer to eight inches, without a cardboard protective insert, is a reliable means for postal customers other than Netflix to reduce the breakage rate of DVDs in return mailings to acceptable levels?

(d) If your answer to part (c) is anything but an unqualified negative, please provide all data, studies and analyses on which you rely.

(e) Please produce all other data, studies and analyses created since January 1, 2005, concerning the breakage rate of eight-inch DVD mailers without a protective insert.

RESPONSE:

(a) The Postal Service declined to join GameFly's contention because Postal Service Engineering has not studied this issue. Furthermore, the term "acceptable" was undefined.

(b) N/A

(c) The Postal Service has not made such a contention.

(d) N/A

(e) The Postal Service has no data concerning the breakage rates of eight inch two way DVD mailers without a protective insert.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-56. This question refers to Paragraph 51 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 51 contains the following GameFly statement, which the Postal Service declined to join: "[A] DVD mailpiece at least 8.5" in height with sufficient stiffness not to fold over would exceed one ounce in weight, and thus would require the payment of postage for a two-ounce First-Class flat."

- (a) Please identify each reason for the Postal Service's unwillingness to stipulate to the quoted statement.
- (b) Please provide all data, studies and analyses that you contend support each reason identified in part (a).

RESPONSE:

(a) The Postal Service declined to join GameFly's contention that such a mailpiece would invariably exceed one ounce in weight because it has never studied this precise issue. The Postal Service agrees that such a mailpiece would most likely exceed one ounce.

(b) N/A

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-57. This question refers to Paragraph 54 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 54 contains the following GameFly statement, which the Postal Service declined to join: "[T]he production of a DVD mailer 8.5" or more tall would be difficult or infeasible."

(a) Please identify each reason for the Postal Service's unwillingness to stipulate to the quoted statement.

(b) Please provide all data, studies and analyses that you contend support each reason identified in part (a).

(c) Please produce any other data, studies or analyses created since January 1, 2005, concerning the feasibility of producing a DVD mailer 8.5" or more tall.

(d) For each DVD mailer currently on the market that is 8.5" or more tall, please identify the manufacturer, model number, physical specifications and price of the mailer.

RESPONSE:

(a) The Postal Service declined to join GameFly's contention because it has never studied whether the production of such a mailer would be "difficult or infeasible."

(b) As stated in the response to part (a), the Postal Service declined to join GameFly's contention because it has not studied this issue.

(c) The Postal Service has not conducted studies on this issue.

(d) The Postal Service is unaware of any such mailer.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-59. This question refers to Paragraph 43 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 43 contains the following contention by the Postal Service: "[A]utomated flats processing has been important to GameFly because of its desire to receive Confirm scans."

(a) Does the Postal Service contend that the opportunity to receive Confirm scans is more important to GameFly than the opportunity to receive Netflix-level rates of DVD breakage at Netflix rates of postage?

(b) If your answer to part (a) is anything other than an unqualified negative, produce all documents on which you rely and provide a written description (including the identity of the speaker and witnesses and the date of the communication) of each oral communication on which you rely.

RESPONSE:

(a) No. The Postal Service has no basis to state what is or is not "more important" to GameFly.

(b) N/A

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-60. This question refers to Paragraph 44 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 44 contains the following contention by the Postal Service: "GameFly has in the past requested automated flats processing in lieu of other types of processing, including manual processing."

(a) Prior to the requests referred to in Paragraph 44 of the Joint Statement, had the Postal Service ever communicated to GameFly that it had the alternative of entering its DVDs in lightweight mailers like those of Netflix, at the rates of postage charged for machinable letters, while receiving the same degree of manual culling and priority manual processing—and the same rates of DVD breakage—that the Postal Service currently offers to Netflix?

(b) If your answer to part (a) is anything other than an unqualified negative, produce all documents on which you rely and provide a written description (including the identity of the speaker and witnesses and the date of the communication) of each oral communication on which you rely.

RESPONSE:

(a) No.

(b) N/A

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-61. This question refers to Paragraph 124 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 124 contains the following contention by the Postal Service: "GameFly specifically requested AFSM 100 processing in preference to manual processing, and . . . GameFly's stated reasons for preferring AFSM 100 processing were to enable GameFly to receive Confirm scans, reduce the amount of breakage, and reduce the amount of theft."

(a) Prior to the requests referred to in Paragraph 124 of the Joint Statement, had the Postal Service ever communicated to GameFly that it had the alternative of entering its DVDs in lightweight mailers like those of Netflix, at the rates of postage charged for machinable letters, while receiving the same degree of manual culling and priority manual processing—and the same rates of DVD breakage—that the Postal Service currently offers to Netflix?

(b) If your answer to part (a) is anything other than an unqualified negative, produce all documents on which you rely and provide a written description (including the identity of the speaker and witnesses and the date of the communication) of each oral communication on which you rely.

RESPONSE:

(a) No.

(b) N/A

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-62. This question refers to Paragraph 125 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 125 contains the following GameFly contentions, which the Postal Service declined to join: "GameFly . . . requested AFSM 100 processing because the Postal Service had not offered GameFly manual culling and high priority manual processing of DVD return mailers entered at letter rates. GameFly further contends that it would accept culling and manual processing of DVD return mailers entered at letter rates on terms comparable to those currently offered to Netflix, in preference to AFSM 100 automated processing, if given the option."

(a) Please identify each element of the quoted statements with which the Postal Service is unwilling to agree.

(b) For each such element, please explain why the Postal Service is unwilling to agree with it.

(c) If the reasons stated in part (b) are based in whole or part on documents, please produce them.

(d) If the reasons stated in part (b) are based in whole or part on oral communications from Postal Service employees, please provide the name of each such employee; his or her job title, department or group, and work location at the time of the communication(s); and the substance of the communication.

(e) If the reasons stated in part (b) are based in whole or part on oral communications from representatives of GameFly, please state the date and time of the communication, the name of each GameFly representative, the name of each Postal Service employee who allegedly heard the communication (if oral), the substance of the communication (if oral), and a copy of the communication (if written).

RESPONSE:

(a)-(b) The Postal Service did not join GameFly's contention because it has no basis to know GameFly's internal reasoning for requesting AFSM processing, beyond the reasons expressed to the Postal Service.

(c) N/A

(d) N/A

(e) N/A

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-64. This question refers to Paragraph 55 of the parties' July 20, 2009, Joint Statement of Undisputed and Disputed Facts. Paragraph 55 contains the following contentions by the Postal Service: "(a) the mailer currently being used by GameFly is configured such that the placement of the DVD on the return trip leaves a floppy portion at the bottom of the mail piece; (b); this floppy portion can fold up during processing; (c); this can hinder processing; and (d) the GameFly mail piece is a 'fletter,' in that Postal Service mail processing personnel may view it as having the characteristics of a letter." Please produce all studies, analyses and other documents on which you rely in support of these contentions.

RESPONSE:

(a) This contention is based on what the Postal Service understands to be GameFly's current DVD mailer.

(b)-(c) This contention is based on the fact that the flats culling feature grabs mailpieces at a certain height; if a piece is not tall enough to be culled as a flat, it could remain in the letter stream and be processed that way.

(d) There are no studies or analyses on this issue. The GameFly mailer was described as a "fletter" by a GameFly representative at meetings held at the 2009 National Postal Forum.