

**BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001**

COMPLAINT OF GAMEFLY, INC.            )  
  ) Docket No. C2009-1  
  )

**SECOND DISCOVERY REQUESTS OF GAMEFLY, INC.,  
TO THE UNITED STATES POSTAL SERVICE  
(GFL/USPS-66 – 83)**

Pursuant to Rules 25 through 27 of the Rules of Practice and Procedure of the Postal Regulatory Commission, GameFly, Inc. (“GameFly” or “GFL”) respectfully submits the following discovery requests to the United States Postal Service (“Postal Service”).

Respectfully submitted,

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August 28, 2009

## **INSTRUCTIONS AND DEFINITIONS**

### **A. Instructions**

1. These discovery requests impose a continuing obligation to respond and to provide additional information as it becomes available.

2. If no information or documents are responsive to any of these discovery requests, please so indicate.

3. For each data request, please identify the preparer or the person under whose direct supervision the response was prepared.

4. Please specify the data request to which each document applies. If a document or narrative response applies to more than one request, please provide a cross reference.

5. For data requests calling for the production of documents, please provide legible, true, and complete copies of the documents. If a responsive document has been lost or destroyed, or is otherwise unavailable, please follow Instruction 12 below.

6. Where a data request specifically requests a narrative response rather than the production of documents alone, a narrative response is required and the production of documents does not substitute for a narrative response.

7. These data requests are to be construed broadly to elicit all requested information which is discoverable under the Commission's Rules of Practice. Accordingly,

(a) The present tense includes the past tense and the past tense includes the present tense, and

(b) The singular includes the plural and the plural includes the singular.

8. The section headings in these discovery requests are provided solely for the convenience of the reader, and are not intended as restrictions on the scope of the information sought.

9. If any responsive information is not available in the form requested, please provide the available information or documents which best responds to the data request.

10. The time period covered by each question is limited to the period since November 1, 2007, unless the question (a) specifies a different time period, or (b) seeks production of the documents or information on which the Postal Service relies in support of a statement, claim or proposition.

11. These data requests apply to all responsive information and documents in your possession, custody, and control, or in the possession, custody, or control of your attorneys, witnesses, or other agents, from all files, wherever located, including active and inactive files and including electronic files.

12. If any responsive information or document is not in your possession, custody, or control, but you know or believe that it exists, please identify the information or document and indicate to the best of your ability the location and custodian of the information or document.

13. If any document responsive to any of these data requests has been destroyed or is otherwise unavailable, please identify and describe:

- (a) The subject matter and content of the document,
- (b) All persons involved in the destruction or removal of the document,
- (c) The date of the document's destruction or removal, and
- (d) The reasons for the destruction or other unavailability of the document.

14. If you assert any claim of privilege or discovery immunity in response to any data request, please identify each document withheld and state:

- (a) The document's title and type,
- (b) The privilege or immunity claimed and the basis for claiming such privilege or immunity,
- (c) Each person who prepared, signed, or transmitted the document,
- (d) Each person to whom the document, or any copy of the document, was addressed or transmitted,

(e) The date of the document, and

(f) The subject matter of the document.

15. For each response which is generated by a computer or electronic data storage mechanism, please state:

(a) The name of the file from which the response came,

(b) How the data are stored (punch cards, tapes, disks, etc.),

(c) How the data are transmitted and received, and

(d) The name of each person who collected the data or entered the data into the computer or electronic data storage mechanism.

16. For any requests with subparts, please provide a complete separate response to each subpart as if the subpart was propounded separately.

17. If information or documents responsive to any of these data requests has previously been provided in this proceeding in response to a discovery request by any participant, please provide a specific cross-reference. There is no need to make a duplicate response.

18. If you perceive any ambiguity in interpreting any data request, or any instruction or definition applicable thereto, please secure a clarification from counsel for GameFly as soon as the ambiguity is perceived.

## Definitions

1. "Answer" refers to the Answer of the United States Postal Service submitted on May 26, 2009.

2. "Communication" means any correspondence, contact, discussion or exchange between any two or more persons. The term includes, but is not limited to, all documents, telephone conversations or face-to-face conversations, electronic mail, conferences or other meetings.

3. "Document" means any written, recorded, computer-stored, computer-generated or graphic material however stored, produced or reproduced. The term is to be construed to the full extent of the definition in Rule 34 of the Federal Rules of Civil Procedure. Any document that is not exactly identical to another document for any reason, including but not limited to marginal notations or deletions, is a separate document.

4. "DVD" means an optical disc storage medium also known as "Digital Versatile Disc" or "Digital Video Disc." As used in these questions, the term encompasses movie, music and game DVDs, and next-generation High Definition optical formats (such as Blu-ray Disc) as well as the standard definition format.

5. "DVD mailer" and "lightweight mailer" mean a mailpiece consisting of a DVD in a specialized mailing envelope, which may also include a protective insert. As used in these questions, the terms "DVD mailer" and "lightweight mailer" do not refer to mailpieces with DVDs in hard plastic jewel cases.

6. "Each" includes the term "every" and "every" includes the term "each." "Any" includes the term "all" and "all" includes the term "any." "And" includes the term "or" and "or" includes the term "and."

7. "Identify" means to state as follows:

- (a) With respect to a document and to the extent that the following information is not readily apparent from the document itself: (i) the document's title, date, author(s), signer(s), sender(s), addressee(s) and recipient(s); (ii) the type of document (e.g., letter, memorandum, agreement, invoice) its location and custodian; and (iii) a detailed description of its contents or principal terms and provisions.
- (b) With respect to a communication and to the extent the following information is not readily apparent: (i) the time, date and place of the communication; (ii) all maker(s) and recipient(s) of the communication; (iii) the mode of communication; (iv) the subject matter of the communication; and (v) any document generated in connection with the communication.
- (c) With respect to a person and to the extent the following information is not readily apparent: (i) the person's full name; (ii) the person's employer, job title, and a brief description of the person's current duties and duties at the time relevant to the data request; and (iii) the person's business address.

8. "Joint Statement of Undisputed and Disputed Facts" refers to the Joint Statement of Undisputed and Disputed Facts filed by the parties on July 20, 2009.

9. "OIG report" means OIG Audit Report No. MS-AR-08-001, Review of Postal Service First-Class Permit Reply Mail (issued November 8, 2007).

10. "Postal Service" or "USPS" refers to the United States Postal Service, including USPS Headquarters and any subordinate department, division, or office of the USPS, whether at the national, area, district or local level. This definition includes the officers, directors, agents and employees of the United States Postal Service and its Board of Governors.

11. "You" and "your" refers to the Postal Service, as indicated by the context of the question, as described in definition 2 supra.

12. The terms "related to" or "relating to" mean being in any way relevant to, commenting on, consisting of, referring to, composing, comprising, discussing, evidencing, identifying, involving, reflecting, or underlying.

13. The terms "state," "describe" and "explain" call for answers independent from any documents that are required in response to these data requests. Such answers should be in a form (e.g., narrative, tabular) appropriate to a complete response to the request.

## QUESTIONS

**GFL/USPS-66.** This question refers to discovery request GFL/USPS-1(e) and your answer to it. GFL/USPS-1(e) asked

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?

Your answer was:

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

(a) Regardless of whether “Engineering” formally evaluated the Netflix mailer for its ability to protect a DVD from damage, did Mr. Laws or any other USPS engineering employee *personally* form an opinion on or about June 11, 2002, regarding the effectiveness of the Netflix DVD mailer in protecting against DVD breakage from automated letter processing?

(b) If your answer to part (a) is anything but an unqualified negative, please identify the employee and state his or her opinion on the issue.

**GFL/USPS-67.** Please refer to Paragraph 35 of the Postal Service’s Answer to GameFly’s Complaint, which states:

However, Respondent admits 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.

Please refer further to the Postal Service's response to GFL/USPS-18, which states:

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.

Finally, please refer further to Paragraph 36 of the GameFly Complaint, which states:

A report by the Postal Service's Office of Inspector General in November 2007 found that 70 percent of the two-way DVD mailers from one unnamed DVD rental company received manual processing for this reason. USPS Office of Inspector General, Audit Report No. MS-AR-08-001, Review of Postal Service First-Class Permit Reply Mail (November 8, 2007).

(a) Does the Postal Service believe that the primary reason that at least 70 percent of Netflix inbound mail is processed manually is to get all mail processed during the available window so as to meet service standards?

(b) Please explain fully why a large portion of Netflix mail must be handled manually to meet service standards.

**GFL/USPS-68.** Please refer 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).

Please refer further to R2006-1, USPS-T-42 (Marc McCrery, then Manager, Operational Requirements) at 3, which states:

Letter processing operations are geared towards barcoding and/or sorting as much letter volume through automated operations as possible, with the ultimate goal of processing letters into Delivery Point Sequence (DPS) or, to a lesser extent, to the carrier route level.

(a) Are all mail processing decisions concerning the automated or manual handling of machinable letter volumes made locally? Please explain fully.

(b) Please provide all Headquarters, Area, and District policies on when machinable letter volumes should be handled manually or on automation.

(c) Please reconcile Headquarters general policy on how machinable letters should be processed with Headquarters policy on the processing of Netflix inbound letters.

**GFL/USPS-69.** The question refers to your answer to GFL/USPS-22. Please produce copies of all texts, outlines, PowerPoint slides, emails, questions, answers and other documents created in connection with any “webinar with field management” since January 1, 2007, that dealt wholly or in part with the processing of return DVD mail.

**GFL/USPS-70.** Please refer to the Postal Service’s answers to discovery request GFL/USPS-23(b)-(d). The responses state:

“(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. “

(a) Since 2003, has the Postal Service been aware of the existence of any entity other than Netflix whose return mailers have been entered as machinable letters but given manual processing at an above-average rate?

(b) For each entity listed in response to subpart (a) of this interrogatory, please explain what the Postal Service has done to reduce or limit the percentage of machinable letters that are processed manually.

(c) Please confirm that your response to GFL/USPS-23(d) can be fairly restated as:

(d) No steps have been taken with respect to return DVD mail, because the official policy of Headquarters is to allow field officials to determine which method (automated versus manual) to use for handling these pieces.

If you fail to confirm without qualification, please identify which element of the restatement you contend is inaccurate, and explain why.

(d) Please identify the individual(s) at Postal Service headquarters responsible for the decision to leave the choice between manual and automated processing of Netflix's inbound DVD mail to the discretion of field officials.

(e) Please produce all documents relating to the deliberations of Postal Service headquarters that culminated in the decision to leave the choice between

manual and automated processing of Netflix's inbound DVD mail to the discretion of field officials.

(f) Has the Postal Service headquarters ever considered adopting standards or rules that would limit the discretion of field officials to provide large amounts of manual processing to Netflix inbound DVD mailers? If so, please produce all documents, including both internal USPS communications and communications with Netflix, created since January 1, 2005, concerning this subject.

**GFL/USPS-71.** Please define "most efficient method" as the term is used in the Postal Service's response to GFL/USPS-23(d).

(a) In particular, is it the Postal Service's position that processing Netflix's pieces manually is sometimes a lower cost processing option than processing them on automation?

(b) Is it the Postal Service's position that processing Netflix's pieces manually is often a lower cost processing option than processing them on automation?

(c) Is it the Postal Service's position that processing Netflix's inbound pieces manually, but charging machinable letter rates for those pieces, is more efficient than processing Netflix's inbound pieces manually and charging extra for the manual processing, e.g., through a nonmachinable surcharge?

(d) Please explain your answers to parts (a) through (c) in detail and, if the answer to any part is “yes”, provide all reasoning and calculations.

(e) Please produce all studies, analyses and similar information that you contend support your responses to parts (a) through (d).

**GFL/USPS-72.** This is a follow-up to your answer to GFL/USPS-24(d), in which you state that “Headquarters has not conducted any specific studies on this issue”—i.e., on 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.’” Please produce all information that the Postal Service has on the issue, whether or not the result of a study devoted specifically to the issue.

**GFL/USPS-73.** Please refer 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 identify all circumstances in which you contend that removing “Netflix mail from automation operations ensure[s] the overall efficiency of mail processing operations.”

(b) Please produce all studies, analyses and similar documents that you contend support your response to part (a).

(c) Please explain how allowing “mail processing decisions concerning the automated or manual handling of Netflix DVD return mail” to be “made locally” in fact “ensure[s] the overall efficiency of mail processing operations”.

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

**GFL/USPS-74.** Please provide the Postal Service’s FY 2008 unit cost per sort (including piggybacks) for manual letter sorting operations and all underlying calculations.

**GFL/USPS-75.** Please provide the Postal Service’s FY 2008 unit cost per sort for automated letter sorting operations and all underlying calculations.

**GFL/USPS-76.** Please provide the Postal Service’s FY 2008 unit cost per sort for automated flat sorting operations and all underlying calculations.

**GFL/USPS-77.** This is a follow-up to your responses to GFL/USPS-26 and 27.

(a) For each Area that leaves the choice between manual and automated processing of Netflix return mailers to the discretion of subordinate offices within the Area, please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar documents issued by those subordinate offices since January 1, 2007 (or issued

before that date by maintained in effect for any period since then) concerning the choice between automated and manual processing of DVD return mailers.

(b) For each District office that leaves the choice between manual and automated processing of Netflix return mailers to the discretion of subordinate offices within the District, please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar documents issued by those subordinate offices since January 1, 2007 (or issued before that date by maintained in effect for any period since then) concerning the choice between automated and manual processing of DVD return mailers.

(c) For each P&DC and other local office that has been left with discretion to choose between manual and automated processing of Netflix return mailers, please produce all directives, guidance, guidelines, handbooks, instructions, manuals, notices, rules, SOPs, standards and similar documents issued by that P&DC or local office since January 1, 2007 (or issued before that date by maintained in effect for any period since then) concerning the choice between automated and manual processing of DVD return mailers.

**GFL/USPS-78.** This question refers to your response to GFL/USPS-28, which states:

(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.

(a) Please produce all memoranda, analyses, emails and other communications relating to the promulgation of the “Netflix Mail Drop” item in the May 4, 2007, issue of *Retail Digest*.

(b) The “Netflix Mail Drop” item in the May 4, 2007, issue of *Retail Digest* states that the creation of “special mail drops and signage for Netflix returns . . . has legal ramification for the Postal Service.” What “legal ramification” was the Postal Service referring to? Was the contemplated ramification related to 39 U.S.C. § 403(c)?

(c) Please list all actions taken by USPS Headquarters, Area, and District officials since issuance of the referenced “Headquarters policy” to enforce compliance with it.

(d) Please list all actions taken by USPS Headquarters, Area, and District officials since issuance of the referenced “Headquarters policy” to determine the extent of compliance with it.

**GFL/USPS-79.** This question concerns the following photograph:



(a) Please confirm that this is a true and accurate photograph of the public mail drop slots in the lobby of the Susanville, California, post office on or about August 1, 2009. If you do not confirm without qualification, please explain fully.

(b) Please confirm that one of the four mail drop slots in the lobby of the Susanville, California, post office is marked "NETFLIX ONLY." If you do not confirm without qualification, please explain fully.

(c) Please confirm that Netflix is the only DVD rental company with a mail drop slot reserved for its return mail in the lobby of the Susanville, California, post office. If you do not confirm without qualification, please explain fully.

(d) Please confirm that Netflix is the only private company of any kind with a mail drop slot reserved for its return mail in the lobby of the Susanville, California, post office. If you do not confirm without qualification, please explain fully.

(e) When was a mail drop slot in the lobby of the Susanville, California, post office first reserved for "NETFLIX ONLY"? If you do not know the precise date, please provide the best approximation you can.

(f) Please identify the organization that devised the idea of reserving a drop slot in the Susanville post office for "NETFLIX ONLY."

(g) Please identify the organization that created the red "NETFLIX ONLY" sign in the Susanville post office.

(h) Please produce all documents relating to the creation of the "NETFLIX ONLY" drop slot in the Susanville post office.

(i) Has the Susanville post office, or any higher-level entity to which the Susanville post office reports (e.g., P&DC, District, Area office), considered establishing a drop slot in the Susanville post office for the reply mailers of other DVD rental companies? If so, please produce all documents relating to such consideration.

**GFL/USPS-80.** This question concerns the following photograph:



(a) Please confirm that this is a true and accurate photograph of the public mail drop slots in the lobby of the Alturas, California, post office on or about August 1, 2009. If you do not confirm without qualification, please explain fully.

(b) Please confirm that one of the four mail drop slots in the lobby of the Alturas, California, post office is marked "NETFLIX ONLY." If you do not confirm without qualification, please explain fully.

(c) Please confirm that Netflix is the only DVD rental company with a mail drop slot reserved for its return mail in the lobby of the Alturas, California, post office. If you do not confirm without qualification, please explain fully.

(d) Please confirm that Netflix is the only private company of any kind with a mail drop slot reserved for its return mail in the lobby of the Alturas, California, post office. If you do not confirm without qualification, please explain fully.

(e) When was a mail drop slot in the lobby of the Alturas, California, post office first reserved for "NETFLIX ONLY"? If you do not know the precise date, please provide the best approximation you can.

(f) Please identify the organization that devised the idea of reserving a drop slot in the Alturas post office for "NETFLIX ONLY."

(g) Please produce all documents relating to the creation of the "NETFLIX ONLY" drop slot in the Alturas post office.

(h) Has the Alturas post office, or a higher-level entity to which the Alturas post office reports (e.g., P&DC, District, Area office), considered establishing a drop slot in the Alturas post office for the reply mailers of other DVD rental companies? If so, please produce all documents relating to such consideration.

**GFL/USPS-81.** This is a follow-up to your response to GFL/USPS-30. Please respond to each subpart of the interrogatory by providing the most precise percentage estimates that you can.

**GFL/USPS-82.** Please refer 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) Does the Postal Service agree 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”? Please explain fully any disagreement.

(b) Have any other senders of round-trip DVD mailers communicated to the Postal Service 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”? If so, please provide a list of companies that have

so communicated this to the Postal Service and provide copies of all communications.

(c) Have any senders of round-trip DVD mailers requested that their inbound mailpieces be handled manually to reduce breakage rates? If so, please provide a list of companies that have made such a request and provide copies of all such requests and USPS responses to those requests.

**GFL/USPS-83.** Please refer to R2006-1, USPS-T-42 (Marc McCrery, then Manager, Operational Requirements) at 11-12, which states:

Volume that is still left in manual letter operations is primarily composed of pieces that are deemed to be nonmachinable on letter automation due to one of several factors. Any letter-size piece is considered nonmachinable if it meets any of the nonmachinable criteria listed in DMM 201.2.0.

These mailpieces are excluded from automated processing for various reasons, but primarily due to the incompatibility with automated processing, which may impede the mail flow or damage the mail or mail processing equipment. Manual letters are considerably more costly to operations (approximately 13 times more labor cost per handling) to process than machinable letters. Pieces over 6 1/8 inches in height, 1/4 inch thick, and/or 11 1/2 inches in length are considered a flat or a parcel.

Rejects from automation also end up in the manual operation. Pieces may have been rejected due to an unreadable barcode and ID tag, inadequate customer addressing, or insufficient barcode (e.g., 5- or 9-digit code) for DPS processing. For example, the street directional (North or South) or suffix (St, Rd, Dr) may be missing, yet is required for coding to the delivery point when duplication exists in the address range. As stackers are swept in automated operations, many of these rejects arrive in manual operations close to the clearance time, which is the completion time necessary to meet dispatches. Manual operations are staffed accordingly to meet service commitments.”

(a) Does the Postal Service agree with Mr. McCrery that sorting letters manually is “considerably more costly to operations” than automated sorting? If not, please explain fully.

(b) Please reconcile Mr. McCrery’s statement with the Postal Service’s apparent position that manual processing (USPS response to GFL/USPS-23(d)) of Netflix inbound machinable letters may sometimes be deemed by the field to be the “most efficient method.”

(c) Does the Postal Service agree with Mr. McCrery that the primary reasons for manual processing are nonmachinability and rejects from automation?

(d) Please reconcile Mr. McCrery’s statement with the Postal Service’s assertion in this proceeding (Paragraph 35 of the USPS Answer) that “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.”