

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

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

**THIRD DISCOVERY REQUESTS OF GAMEFLY, INC.,  
TO THE UNITED STATES POSTAL SERVICE  
(GFL/USPS-84 – 102)**

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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September 18, 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-84.** Please confirm that the following individuals have personally been aware since at least 2005 that the majority of Netflix inbound mailpieces are culled from the automation mailstream and manually processed. If not confirmed, please provide the date when each first became aware of this.

- The Postmaster General
- The Deputy Postmaster General
- The Senior Vice President, Operations
- The previous Senior Vice President, Operations
- The General Counsel
- The Senior Vice President, Customer Relations
- The Acting Senior Vice President, Strategy and Transition
- The previous Senior Vice President, Strategy and Transition
- The Vice President, Pricing
- The Acting Vice President, Engineering
- All Vice Presidents, Area Operations

**GFL/USPS-85.** Please confirm that the following individuals have personally been aware since at least 2005 that some Areas and Districts had Standard Operating Procedures in place instructing employees to cull Netflix inbound mailpieces from the automation mailstream and manually process them. If not confirmed, please provide the date when each first became aware of this.

- The Postmaster General
- The Deputy Postmaster General
- The Senior Vice President, Operations
- The previous Senior Vice President, Operations
- The General Counsel
- The Senior Vice President, Customer Relations
- The Acting Senior Vice President, Strategy and Transition
- The previous Senior Vice President, Strategy and Transition
- The Vice President, Pricing

- The Acting Vice President, Engineering
- All Vice Presidents, Area Operations

**GFL/USPS-86.** Please confirm that, while USPS Headquarters has specifically instructed field personnel to process Netflix on automated letter processing equipment, Headquarters has not done so for inbound mailpieces.

**GFL/USPS-87.** Please identify the individuals or groups at Postal Service Headquarters responsible for the decision to instruct field personnel how to process outbound Netflix mailpieces.

**GFL/USPS-88.** Please identify the individuals or groups responsible for the decision to leave the method of processing inbound Netflix mailpieces to the discretion of field personnel.

**GFL/USPS-89.** Please provide the instructions issued by Postal Service headquarters to field personnel regarding the processing of Netflix *outbound* mailpieces.

**GFL/USPS-90.** Please provide the FY 2007 and FY 2008 percentage of Netflix's inbound overnight service standard pieces that received same-day service. Please provide all underlying data and calculations.

**GFL/USPS-91.** Please provide the FY 2007 and FY 2008 percentage of Netflix's inbound two-day pieces that received overnight service. Please provide all underlying data and calculations.

**GFL/USPS-92.** Please provide the FY 2007 and FY 2008 percentage of Netflix's outbound overnight service standard pieces that received same-day service. Please provide all underlying data and calculations.

**GFL/USPS-93.** Please provide the FY 2007 and FY 2008 percentage of Netflix's outbound two-day pieces that received overnight service. Please provide all underlying data and calculations.

**GFL/USPS-94.** Please provide the FY 2008 average postage per piece for the outbound DVD mailpieces of (i) Netflix, (ii), Blockbuster, and (iii) GameFly.

**GFL/USPS-95.** Please provide the FY 2008 average postage per piece for the inbound DVD mailpieces of (i) Netflix, (ii), Blockbuster, and (iii) GameFly.

**GFL/USPS-96.** Please refer to the response to GFL/USPS-19(b)-(c) where it states:

With respect to Blockbuster, relatively recent changes to the postage 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.

Please confirm that the change in Blockbuster's postage payment method, which may have increased the percentage of pieces processed on automation, was made voluntarily by Blockbuster. If not confirmed, please explain fully.

**GFL/USPS-97.** Please refer to the Postal Service's affirmative response to GFL/USPS-10(b).

(a) Please provide a list of all companies whose two-way mailers were “previously approved in writing by the USPS® for automation prices” and indicate which were substantially similar in design to Netflix’s mailpieces.

(b) Please provide a list of all companies with two-way mailers that are substantially similar in design to Netflix’s mailpieces and have been denied access to automation or machinable letter prices as a result of the change in mailing standards referenced in GFL/USPS-10.

(c) Does the Postal Service contend that the differential treatment of substantially similar mailpieces in these circumstances has been appropriate? Please explain fully.

**GFL/USPS-98.**

(a) Please describe the typical mail flow for Netflix mail pieces that are deposited into Netflix-only mail slots.

(b) Are these pieces generally available for pickup by Netflix on the same day that the pieces are deposited into the mail slot?

(c) What is the official service standard for these pieces?

**GFL/USPS-99.** Please confirm the following statements. Explain fully any failure to confirm:

(a) The Postal Service Intranet (“blue”) website includes a page of contact information for Business Mail Acceptance (“BMA”) managers.

(b) The listing identifies the subject matter responsibilities of each BMA manager.

(c) One manager is identified as having responsibility for “Netflix.”

(d) The manager identified as having responsibility for “Netflix” is Michael Ohora.

(e) The listings of BMA managers identify no other individual Postal Service customer as the responsibility of any BMA manager.

**GFL/USPS-100.** Please explain why the Postal Service assigns an individual Business Mail Acceptance (“BMA”) manager to Netflix, but to no other customer of the Postal Service.

**GFL/USPS-101.** Please refer to the document produced by the Postal Service and numbered by GameFly as GFL0073694.

(a) Please identify the author of this document.

(b) What organization issued the document?

(c) What is the purpose of this document?

**GFL/USPS-102.** Please provide the average weight per piece of Netflix, Blockbuster, and GameFly mailpieces in each year from FY 2005 through FY 2008.