

PRESIDING OFFICER'S
RULING NO. C2009-1/13

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of GameFly, Inc.

Docket No. C2009-1

PRESIDING OFFICER'S RULING
ON MOTIONS TO UNSEAL

(Issued December 7, 2009)

In October, 2009, GameFly filed three motions to unseal certain pleadings. On October 8, 2009, it filed a motion to unseal the unredacted version of its seventh discovery requests.¹ On October 13, 2009, it filed a motion to unseal the unredacted version of its motion to compel the Postal Service to answer certain discovery requests.² On October 19, 2009, it filed a motion to unseal the unredacted version of its eighth discovery requests.³ These motions will be referred to collectively as the Motions to Unseal.⁴ The Motions to Unseal raise issues similar to those addressed in P.O. Ruling C2009-1/12, issued November 18, 2009.⁵

¹ Motion of GameFly, Inc., to Unseal Unredacted Version of Seventh Discovery Requests (GFL/USPS-201-211), October 8, 2009.

² Motion of Gamefly, Inc., to Unseal Unredacted Version of Motion to Compel the Postal Service to Answer Discovery Requests (GFL/USPS-84, 85, 99, 100, 109, 117, 122, 151 and 152(d)), October 13, 2009).

³ Motion of Gamefly, Inc., to Unseal Unredacted Version of Eighth Discovery Requests (GFL/USPS-212-213), October 19, 2009.

⁴ The three motions to unseal certain filed discovery requests, pleadings, or redacted portions thereof, primarily pertain to information derived from various documents designated by the Postal Service as confidential. The Postal Service originally provided these source documents for review by GameFly's outside counsel under a protective order. See, PRC Order No. 284, Order Granting, In Part, Joint Motion For Protective Conditions, August 21, 2009 (collectively, Motions to Unseal).

⁵ P.O. Ruling C2009-1/12, Presiding Officer's Ruling on Motion to Show Cause Why Certain documents Should Not Be Unsealed, November 18, 2009.

P.O. Ruling C2009-1/12 addresses GameFly's earlier motion to show cause why certain documents designated confidential and filed should not be unsealed.⁶ That ruling not only sets forth the applicable legal standard, procedures, and a three-part test under proposed criteria, but it also certifies the question over the proper final criteria for the full Commission's determination, following comments.⁷

GameFly's motions to unseal also shall be resolved utilizing the criteria established by the Commission following review of issues certified in PO Ruling C2009-1/12. Those criteria will establish the conditions for removal of non-public treatment limitations on information marked confidential, and on related, earlier pleadings, which no longer warrant continuing protection.⁸

The procedures under which the parties are directed to meet and confer to apply the final criteria to documents identified in the Show Cause Motion appear sufficient to guide them to resolve the additional questions raised under the Motions to Unseal. Accordingly, the parties are further directed to apply the final criteria to all implicated source information and to substantially similar materials reflected in the pleadings presently at issue here, within 21-days after the final criteria is determined.

⁶ See Motion of Gamefly, Inc., for Order Directing Interested Parties to Show Cause Why Certain Documents and Information Designated As Proprietary by the Postal Service Should Not Be Unsealed, September 25, 2009 (Show Cause Motion).

⁷ P.O. Ruling C2009-1/12, at 3, n.5, *citing* Show Cause Motion. Under its Show Cause Motion, GameFly sought to unseal portions of the pleadings, which cite or summarize materials marked confidential, including: (1) the Show Cause Motion; (2) sealed portions of pages 10-23 of GameFly's Response of GameFly, Inc. to Opposition of the United States Postal Service to Motion to Compel; September 3, 2009; (3) Fourth Discovery Requests of GameFly to the United States Postal Service (GFL/USPS-103-169), September 18, 2009; and (4) the sealed portions on page 2 and 3 of GameFly's Motion of GameFly to Compel Production of Three Documents Withheld by the United States Postal Service, September 21, 2009. Pleadings at issue are under seal.

⁸ The Postal Service refrained from filing a response to any of the Motions to Unseal, while the related Show Cause Motion was pending. In view of P.O. Ruling C2009-1/12, however, the Postal Service will be permitted to include in its comments on the proposed criteria additional arguments specific to the Motions to Unseal.

RULING

1. The Motions to Unseal the referenced pleadings are to be resolved consistent with the appropriate status of associated source information, which the parties shall determine under the approach described in the body of this ruling, applying the decision criteria once it is finalized by Commission order.
2. For any pleading, or portion thereof, at issue under the Motions to Unseal upon which no agreement appears possible in view of the final criteria, the parties are directed to file a joint statement describing areas of impasse within 21 days after the order on the final criteria. A presiding officer's ruling will follow.

Dan G. Blair
Presiding Officer