

PUBLIC VERSION

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

COMPLAINT OF GAMEFLY, INC.

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Docket No. C2009-1

**ANSWERS OF GAMEFLY, INC., TO
USPS DISCOVERY REQUESTS
USPS/GFL-63 through -83
(June 9, 2010)**

GameFly, Inc., (“GameFly”) respectfully submits its answers to discovery requests USPS/GFL-63 through -83, which the Postal Service served on May 26, 2010. Each discovery request is quoted verbatim and then followed by GameFly’s answer.

Respectfully submitted,

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June 9, 2010

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-63. Please produce a copy of “GameFly’s document retention policies,” referenced in your answers to USPS/GFL-41, 43, 44, and 45 together with any documentation showing or recommending compliance or non-compliance with such policy.

Answer:

Please see Appendix USPS/GFL-63. The “legal counsel” referenced in Mr. Hodess’ March 16, 2009, email were GameFly’s corporate counsel in California.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-64. Your answers to USPS/GFL-41, 43, 44, and 45 state “[a]ny other written or electronic communications relating to this issue were created long enough ago to have been deleted in the ordinary course of business pursuant to GameFly’s document retention policies.” For the deleted communications referenced in your answers to USPS/GFL-41, 43, 44, and 45, please provide the information listed below.

- (a) The subject matter and content of the document or communication;
- (b) All persons involved in the destruction or removal of the document or communication;
- (c) The date of the destruction or removal of the document or communication;
- (d) The reasons for the destruction or other unavailability of the document or communication;
- (e) Any destruction log associated with the document or Communication;
- (f) All documentation showing when the document retention policy commenced; and
- (g) All documents showing or exemplifying how the policy is administered, including reminders, training records and materials, and the method(s) for document destruction.

Answer:

(a) GameFly’s Email Retention Policy, attached as Appendix USPS/GFL-63, states that email can only be stored for a maximum of 15 months from the date the email is created. GameFly’s email infrastructure is configured to delete automatically and permanently any message older than 15 months. As such, GameFly does not have subject matter or content details of any deleted email communications. Outside of emails and instant messenger logs, no formal document retention policy exists.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

(b) The configuration of GameFly's email infrastructure to delete automatically and permanently any messages older than 15 months was performed by GameFly's Director of Network Operations, Lester Wong.

(c) All email communications older than 15 months are automatically deleted on a continuous basis by GameFly's email infrastructure.

(d) The email communications were destroyed in the ordinary course of business pursuant to GameFly's Email Retention Policy. As indicated in the policy, GameFly implemented this policy "to ensure that GameFly's email infrastructure is properly utilized and that all employees are following a common set of procedures in regards to email management." The policy makes the best use of GameFly's limited email storage space while still ensuring that important documents and communications are retained.

(e) No destruction log is created when GameFly's email infrastructure automatically deletes emails older than 15 months.

(f) See GameFly's Answer to USPS/GFL-63.

(g) See GameFly's Answer to USPS/GFL-63. No reminders, training records, or materials are distributed; the Email Retention Policy is enforced automatically through GameFly's email infrastructure.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-65. Please provide the information listed below for each mail piece identified in Appendix USPS-GFL-1.

- (a) piece weight;
- (b) price or rate category for outgoing and return trips; and
- (c) postage paid.

Answer:

Please see Appendix USPS/GFL-65. This document represents GameFly's best effort to recreate these data. GameFly has not kept complete documentation of this information for all of the mailer designs it has used.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-66. Please explain why your answer to USPS/GFL-1, including Appendix USPS-GFL-1, provides no information related to mail pieces used from 2005 and earlier. If you lack hard data on earlier designs, please provide (1) a qualitative description of pieces used and (2) the strengths and weaknesses of the outgoing design compared to its replacement.

Answer: GameFly lacks any quantitative data on the mailpiece design it used before 2005. GameFly believes the mailpiece was identical to or similar to the design identified as Mailer #1 in Appendix USPS-GFL-1.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-67. In your answer to USPS/GFL-4, you state “[t]he two individuals who managed these changes (Steve Brown and Jeff Kawasugi) left GameFly in December 2007 and August 2009, respectively, and GameFly did not retain the two employees’ files on these matters.” Did GameFly impose a litigation hold on the files of the two employees described above? Please describe the litigation hold, including the effective dates and the preserved content, and produce all documents related to the litigation hold. If you did not impose a litigation hold on the files of the two employees described in your answer to USPS/GFL-4, please explain the reasoning for this decision.

Answer:

GameFly is producing files from Jeff Kawasugi as Library Reference GFL-LR-C2009-1-3-Kawasugi Files Responsive to USPS/GFL-67. GameFly did not produce these files earlier because they were not in Mr. Kawasugi’s offices at GameFly’s headquarters. GameFly unexpectedly located some of his files, however, during a subsequent search of one of its distribution centers.

GameFly did not impose a litigation hold on the files of either Mr. Brown or Mr. Kawasugi. Mr. Brown left the company in December 2007, 16 months before this complaint was filed. GameFly recently contacted Mr. Brown, and Mr. Brown stated that he left his files intact at his desk in his office at GameFly’s previous headquarters location. These files may have been destroyed when GameFly moved its offices in November 2008. GameFly is searching its off-site storage in the remote possibility that Mr. Brown’s files were moved there. GameFly will supplement this response if any files are found.

As for Mr. Kawasugi’s files, GameFly did not expect them to (and still does not believe they do) have information relevant to its complaint. As GameFly has

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

repeatedly stated, the complaint was filed against the Postal Service and turns on the Postal Service's actions in discriminating against GameFly. The information relevant to this complaint consists of the Postal Service's costs and the Postal Service's treatment of the mail of GameFly and other DVD rental companies, information that was likely to found only in the Postal Service's possession. Since learning of the Postal Service's inquiries, GameFly CEO David Hodess has directed GameFly employees refrain from destroying any materials potentially relevant to the facts of this case or the Postal Service's lines of inquiry.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-68. In your answer to USPS/GFL-4, you provide a partial email thread dated 6/2/2009. Please produce the complete email thread and the attachments referenced in that email thread.

Answer:

The email in question was printed on June 2, 2009, but dates from December 5, 2007. GameFly did not retain a paper or electronic copy other than what was provided in response to USPS/GFL-4.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-69. In your answer to USPS/GFL-6, you provide Appendix USPS-GFL-6, which includes a PowerPoint document titled "Mailer Performance Update." Please identify who prepared this document and when.

Answer:

This document was prepared in August and September 2008 under the supervision of David Hodess, GameFly's CEO.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-70. [REDACTED]

Answer:

[REDACTED].

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-71. Please provide the position titles for the GameFly personnel identified in Appendix USPS-GFL-38A.

Answer:

David Hodess: CEO

Steve Brown: Vice President-Operations (former)

Jeff Kawasugi: Vice President-Logistics (former)

Don Judge: Director-Loss Prevention

David Barthel: Director-USPS Operations

Sam Guttman: Loss Prevention

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-72. In your answer to USPS/GFL-41, you state “GameFly has no responsive documents other than ... and the documents produced by the Postal Service on this subject in discovery.” Please identify the documents produced by the Postal Service that you assert are responsive to this discovery request.

Answer:

USPS/GFL-41 asked for communications “related to GameFly’s consideration concerning whether or not it should prepare its mail pieces in the same manner as Netflix.” Because the Postal Service never offered to process GameFly’s mail in the same manner as Netflix—or even disclosed the terms of the service given to Netflix, including the custom manual processing of mailers entered at automation letter rates—GameFly had no reason to believe that preparing GameFly mail in the same manner as Netflix would provide any benefit to GameFly. Instead, GameFly chose to enter its mail as a flat to avoid automation letter processing and the damage such processing causes to DVDs.

Since the filing of GameFly’s complaint, the Postal Service has confirmed in response to a GameFly interrogatory that the Postal Service is unwilling to commit to providing GameFly the same level of service as provided to Netflix. In response to GFL/USPS-63, which asked whether the Postal Service would “offer to GameFly the same degree of manual culling and priority manual processing that the Postal Service currently provides to Netflix,” the Postal Service declined to do so, stating instead that the level of manual culling received by GameFly DVD mailers would be left to the “discretion” of “field officials.” USPS Response

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

to GFL/USPS-63. This, of course, is the very arrangement that has produced the current discrimination against GameFly.

More recently, on May 17, 2010, counsel for the Postal Service sent a letter to GameFly counsel, self-styled as “not an offer of settlement,” which appears to be a belated attempt to give public notice of the terms and conditions of the special treatment that the Postal Service has provided Netflix. (A copy of the letter is attached as Exhibit 1 to the Postal Service’s June 7, 2010, Reply to GameFly’s Answer to the Postal Service’s Motion to Compel.) The letter indicates that the Postal Service will not offer manual processing to GameFly unless it agrees to make a variety of operational changes. The letter again disclaims any commitment to provide GameFly with Netflix-like levels of manual processing even if GameFly makes the operational changes. Once again, the Postal Service invokes the supposedly uncontrolled “discretion of local mail processing operations.” Letter at 1 & 2 n. 1.

Consequently, the documents produced in discovery by the Postal Service to which GameFly referred in its response to USPS/GFL-41 were those indicating that automation letter processing causes disc damage and that DVD mailers typically try to avoid such processing to protect their discs. These documents include: GFL 29 (“CD/DVD CFR Draft” stating that “[o]n the DBCS and AFCS, the letters are bent through sharp angles at high speeds in diverter gates which can damage CD/DVDs”); GFL 30 (culling return mailers rather than running them

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

on automation letter processing equipment “prevents significant DVD cracking that would occur as disks are repetitively bent through gates on our equipment”); GFL 58 (“In their return configuration, most of the current envelope designs do not process effectively on letter-sorting equipment.”); GFL 211 (“Anecdotal information attributed DVD damage to the cancellation process on the Advanced Facer Canceler System (AFCS)”); GFL 272 (“We are concerned that the non-machinable standard may not be sufficient to avoid significant jams, damage, and lost productivity in some operations. . . . [T]here are field reports that letters containing CDs in collection mail (e.g. DVD movies being returned, home movies on CDs) are a major and rapidly growing problem on the AFCS.”); GFL 317 (request from Blockbuster for manual processing of its return mailers as avoiding automated processes “may result in . . . reduced damage to our product”); GFL773 (the Round-Trip Disc Mail (RDM) Work Group Minutes: 26 September 2005) (“Disc damage is now becoming the number one issue with RDM [round-trip DVD mail] mailers as more mail is processed on equipment.”); GFL1335 (slide from USPS PowerPoint Presentation titled “LSS Project Re-Measure: Return DVD Handling & Damage Reduction” and dated February 24, 2009) (“Automated USPS handling procedures cause a perceived amount of damage to mailers’ DVD products causing a large return volume to be processed manually at the mailers’ request.”); GFL126 (document titled “Netflix and the Round-Trip Disk Mail (RDM) Project”) (“these tests suggest that if RDM disks are processed completely within letter automation in both directions, they would suffer losses

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

due to cracking in excess of 5 percent per round trip.”); GFL216 (reporting a disk breakage rate of 4.5% within “a small sample set of other mailers”); GFL768 (“[T]he overriding issue for Netflix concerned disc damage on the AFCS”); GFL10 (internal USPS memorandum noting that “damaged (broken) disks during processing and/or delivery” were “common problems” reported by Netflix); GFL 771 (“[Blockbuster] expressed concern about damage to the discs in the current Blockbuster design. [Blockbuster] reported an overall damage rate of 3% with the newer envelope designs.”); GFL374 (stating, in response to testing of a DVD mailer’s proposed envelope design, that “engineering’s ongoing experience with the poor machineability of this design indicates that the [DVD mailer’s] mailer will sustain damage . . . during processing.”); GFL7293 (same); GFL7295 (same); Joint Statement at ¶ 102 (noting that Blockbuster formally asked the Postal Service to “immediately implement manual culling and processing of inbound mail pieces for Blockbuster Online” to mitigate the “persistent damage to mailer contents and longer mail duration rates as judged against comparable mailings.”).

This is not an exhaustive list. The documents produced by the Postal Service to GameFly in discovery include many other documents in the same vein, as the Postal Service is undoubtedly aware.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-73. In your answer to USPS/GFL-43, you state “GameFly has no responsive documents other than ... and the documents produced by the Postal Service in discovery...” Please identify the documents produced by the Postal Service that you assert are responsive to this discovery request.

Answer:

In our response to USPS/GFL-43, GameFly stated that “documents produced by the Postal Service in discovery in this case concerning the damage suffered by DVDs in automated letter processing” would shed light on GameFly’s decision to use a flat-shaped mail piece, as this decision was made primarily to reduce the damage that automation letter processing would cause to GameFly discs. The documents referred to include: GFL 29 (“CD/DVD CFR Draft” stating that “[o]n the DBCS and AFCS, the letters are bent through sharp angles at high speeds in diverter gates which can damage CD/DVDs”); GFL 30 (culling return mailers rather than running them on automation letter processing equipment “prevents significant DVD cracking that would occur as disks are repetitively bent through gates on our equipment”); GFL 58 (“In their return configuration, most of the current envelope designs do not process effectively on letter-sorting equipment.”); GFL 211 (“Anecdotal information attributed DVD damage to the cancellation process on the Advanced Facer Canceler System (AFCS)”); GFL 272 (“We are concerned that the non-machinable standard may not be sufficient to avoid significant jams, damage, and lost productivity in some operations. . . . [T]here are field reports that letters containing CDs in collection mail (e.g. DVD movies being returned, home movies on CDs) are a major and rapidly growing problem on the AFCS.”); GFL 317 (request from Blockbuster for manual

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

processing of its return mailers as avoiding automated processes “may result in . . . reduced damage to our product”); GFL773 (the Round-Trip Disc Mail (RDM) Work Group Minutes: 26 September 2005) (“Disc damage is now becoming the number one issue with RDM [round-trip DVD mail] mailers as more mail is processed on equipment.”); GFL1335 (slide from USPS PowerPoint Presentation titled “LSS Project Re-Measure: Return DVD Handling & Damage Reduction” and dated February 24, 2009) (“Automated USPS handling procedures cause a perceived amount of damage to mailers’ DVD products causing a large return volume to be processed manually at the mailers’ request.”); GFL126 (document titled “Netflix and the Round-Trip Disk Mail (RDM) Project”) (“these tests suggest that if RDM disks are processed completely within letter automation in both directions, they would suffer losses due to cracking in excess of 5 percent per round trip.”); GFL216 (reporting a disk breakage rate of 4.5% within “a small sample set of other mailers”); GFL768 (“[T]he overriding issue for Netflix concerned disc damage on the AFCS”); GFL10 (internal USPS memorandum noting that “damaged (broken) disks during processing and/or delivery” were “common problems” reported by Netflix); GFL 771 (“[Blockbuster] expressed concern about damage to the discs in the current Blockbuster design. [Blockbuster] reported an overall damage rate of 3% with the newer envelope designs.”); GFL374 (stating, in response to testing of a DVD mailer’s proposed envelope design, that “engineering’s ongoing experience with the poor machineability of this design indicates that the [DVD mailer’s] mailer will sustain

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

damage . . . during processing.”); GFL7293 (same); GFL7295 (same); and Joint Statement at ¶ 102 (noting that Blockbuster formally asked the Postal Service to “immediately implement manual culling and processing of inbound mail pieces for Blockbuster Online” to mitigate the “persistent damage to mailer contents and longer mail duration rates as judged against comparable mailings.”).

Other documents produced by the Postal Service in discovery also support these statements. Perhaps the most telling document is GFL1484-85, an email exchange between Netflix and USPS personnel. In this exchange, Netflix states that “70% of our scrap is focused on our rental return product” and “[c]urrently the only viable solution to scrap reduction is the culling of our returns prior to getting into the automation stream.” Netflix also indicates that, with respect to preventing damage to its discs, “the Pacific Area and Cap Metro are the best by far and it just so happens that the Pacific Area has issued an SOP that calls for complete culling.”

There are many other documents on point, including: GFL10 (internal USPS memorandum noting that “damaged (broken) disks during processing and/or delivery” were “common problems” reported by Netflix); GFL 22-23 (“I have seen many messages from processing folks all over the country all saying the same thing, we do not handle and process CDs very well”; “This [Netflix] CD is not, repeat not machineable mail.”); GFL 28 (email chain from September 2004 indicating that USPS was “planning a telecon . . . with Netflix to discuss damage

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

to their DVD discs during automated processing” and that Netflix was “noticing an increase in brakeage [sic] . . . after we told the Plants to work the DVD’s [sic] through letter automation”); GFL 125-26 (document titled “Netflix and the Round-Trip Disk Mail (RDM) Project”) (“these tests suggest that if RDM disks are processed completely within letter automation in both directions, they would suffer losses due to cracking in excess of 5 percent per round trip”); GFL 189 (handwritten notes from 11/1/04 indicating that Netflix was not interested in a Negotiated Service Agreement “because they don’t want it on auto”); GFL 290 (March 11, 2005 email from Netflix to Postal Service) (“Thanks again for meeting with us and your willingness to work together and reduce product damage.”); GFL 458 (“[I]t appears the majority of [Netflix] mail (98%) is being captured at the AFCS and then manually put into EMM trays.”); GFL 462 (USPS document dated Dec. 18, 2003 stating that “[r]ecent reviews in the field indicate this [Netflix] product has migrated away from letter automation and is being processed most frequently on the Automated Flat Sorting Machine 100 and Small Parcel and Bundle Sorter); GFL 467 (page from presentation on Round Trip Disk Mail discussing various degrees on manual processing received by Netflix in different facilities); GFL 509-10 (email chain from July 2003 discussing the development of a new mailpiece “in view of the ongoing problems the Postal Service is experiencing with similar mailing envelopes being used by Netflix” and noting that “most” of the inbound pieces “is not processed on our faster letter-sorting equipment but rather on the slower FSM 1000, or worse yet, manually worked”);

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

GFL 767 (Minutes from RDM Work-Group on Sep. 26. 2005 indicating that Netflix views “processing of return RDM pieces on the AFCS as the major source of disc breakage”); and GFL768 (“[T]he overriding issue for Netflix concerned disc damage on the AFCS”).

This is not an exhaustive list. The documents produced by the Postal Service to GameFly in discovery include many other documents in the same vein, as the Postal Service is undoubtedly aware.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-74. In your answer to USPS/GFL-44, you state “GameFly has no responsive documents other than ... and the documents produced by the Postal Service in discovery...” Please identify the documents produced by the Postal Service that you assert are responsive to this discovery request.

Answer:

Please see GameFly’s response to USPS/GFL-73.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-75. In your answer to USPS/GFL-45, you state “GameFly has no responsive documents other than ... and the documents produced by the Postal Service in discovery...” Please identify the documents produced by the Postal Service that you assert are responsive to this discovery request.

Answer:

Please see GameFly’s response to USPS/GFL-73.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-76. In your answer to USPS/GFL-56, you state “GameFly bases the quoted statements on documents produced by the Postal Service in discovery in this case.” Please identify the documents produced by the Postal Service that you assert support the quoted statements.

Answer:

As GameFly stated in its response to USPS/GFL-56, GameFly cited a number of the documents to support its contention that Netflix mailers suffered high breakage rates when processed on automation equipment and that many mail processing sites began to manually cull Netflix mailers in Paragraph 30 of its Memorandum. The cited documents were GFL 4 (timeline indicating that between approval of Netflix mailer on June 24, 2002 and the beginning of work by USPS Engineering on designing a proprietary mailer in June 2003, many processing facilities were “reporting problems” handling Netflix mailers and were “handling the return mailers manually (culling from AFCS)”); GFL 8 (describing manual processing of Netflix mail in detail), GFL 9 (“Although some Netflix mail pieces are processed on automation, many are not.”); GFL 272 (“[T]here are field reports that letters containing CDs in collection mail (e.g. DVD movies being returned, home movies on CDs) are a major and rapidly growing problem on the AFCS.”), and GFL 460 (September 12, 2002 letter to USPS managers including a Service Talk designed to resolve some of the common processing problems reported by Netflix, including “Damaged (broken disks) during processing and/or delivery”).

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

Other documents produced by the Postal Service in discovery also support these statements. Perhaps the most telling document is GFL 1484-85, an email exchange between Netflix and USPS personnel. During this exchange, Netflix states that “70% of our scrap is focused on our rental return product” and “[c]urrently the only viable solution to scrap reduction is the culling of our returns prior to getting into the automation stream.” Netflix also indicates that, with respect to preventing damage to its discs, “the Pacific Area and Cap Metro are the best by far and it just so happens that the Pacific Area has issued an SOP that calls for complete culling.”

There are many other documents on point, including: GFL10 (internal USPS memorandum noting that “damaged (broken) disks during processing and/or delivery” were “common problems” reported by Netflix); GFL 22-23 (“I have seen many messages from processing folks all over the country all saying the same thing, we do not handle and process CDs very well”; “This [Netflix] CD is not, repeat not machineable mail.”); GFL 28 (email chain from September 2004 indicating that USPS was “planning a telecon . . . with Netflix to discuss damage to their DVD discs during automated processing” and that Netflix was “noticing an increase in brakeage [sic] . . . after we told the Plants to work the DVD’s [sic] through letter automation”); GFL 125-26 (document titled “Netflix and the Round-Trip Disk Mail (RDM) Project”) (“these tests suggest that if RDM disks are processed completely within letter automation in both directions, they would suffer losses due to cracking in excess of 5 percent per round trip”); GFL 189

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

(handwritten notes from 11/1/04 indicating that Netflix was not interested in a Negotiated Service Agreement “because they don’t want it on auto”); GFL 290 (March 11, 2005 email from Netflix to Postal Service) (“Thanks again for meeting with us and your willingness to work together and reduce product damage.”); GFL 458 (“[I]t appears the majority of [Netflix] mail (98%) is being captured at the AFCS and then manually put into EMM trays.”); GFL 462 (USPS document dated Dec. 18, 2003 stating that “[r]ecent reviews in the field indicate this [Netflix] product has migrated away from letter automation and is being processed most frequently on the Automated Flat Sorting Machine 100 and Small Parcel and Bundle Sorter); GFL 467 (page from presentation on Round Trip Disk Mail discussing various degrees on manual processing received by Netflix in different facilities); GFL 509-10 (email chain from July 2003 discussing the development of a new mailpiece “in view of the ongoing problems the Postal Service is experiencing with similar mailing envelopes being used by Netflix” and noting that “most” of the inbound pieces “is not processed on our faster letter-sorting equipment but rather on the slower FSM 1000, or worse yet, manually worked”); GFL 767 (Minutes from RDM Work-Group on Sep. 26. 2005 indicating that Netflix views “processing of return RDM pieces on the AFCS as the major source of disc breakage”); and GFL768 (“[T]he overriding issue for Netflix concerned disc damage on the AFCS”).

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-77. What percentage of the GameFly DVDs entered into the mail stream is damaged before entering the mail stream by the actions of GameFly or customers? Please produce all documents related to damage of GameFly DVDs before entering the mail stream or in processing subsequent to return from customers.

Answer:

Before receiving this request, GameFly had no documents that would indicate the percentage of DVDs that are damaged by the actions of GameFly or its customers before entering the mail stream. As indicated in GameFly's response to USPS/GFL-73, the main cause of damage of DVDs is the processing of reply DVD mailers on automation letter processing equipment.

Anecdotally, GameFly employees have evaluated discs that have returned damaged and concluded that the most likely source of the majority of the damage was processing on Postal Service equipment. To test these anecdotal assumptions, GameFly recently evaluated discs returned damaged at GameFly's distribution center in Pittsburgh. The evaluation confirmed that DVD damage was caused primarily by Postal Service automated processing equipment. Appendix USPS/GFL-77A contains the data GameFly collected. Appendix USPS/GFL-77B contains photographs of the most common types of damage to GameFly discs caused by the Postal Service and GameFly customers.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-78. In your answer to USPS/GFL-9, you state “[a] GameFly employee ... transports the pieces by truck to the GameFly Distribution Center served by the Postal Service facility.” Please describe how the GameFly mail pieces are arranged for transportation on the trucks. In your answer, please describe any procedures undertaken by GameFly to ensure that GameFly mail pieces are not damaged in transit from the postal facility to the GameFly Distribution Center, or when in transit from a GameFly Distribution Center to a postal facility.

Answer:

All GameFly mail is placed in and transported in USPS Mail Transport Equipment (MTE) including 775 Flat Tubs and APCs. The MTE is secured in the transport vehicle to minimize the shifting of the mail during transport.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-79. Your answer to USPS/GFL-55(a) indicates that GameFly does not monitor the type and number of uses by its subscribers or other customers for each of its DVDs. Please identify what, if anything, GameFly keeps track of regarding each individual DVD in its inventory.

Answer:

Please see Appendix USPS/GFL-79, which contains a representative screenshot of the information GameFly tracks about each individual DVD in its inventory. GameFly also tracks the following data on each DVD: Universal Product Code (UPC); ESRB Rating; Publisher; Developer; and Release Date.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-80. Please describe the actions taken by GameFly to comply with the Postal Service's Move Update requirements.

Answer:

Because GameFly's DVD mailers pay single-piece rates, the pieces are not subject to Move Update requirements. Nevertheless, GameFly takes several measures to ensure its customer addresses are current and accurate. The high cost of GameFly's games and the demands of its customers for prompt and reliable service provide GameFly with a strong incentive to avoid mailing to invalid or incorrect addresses.

GameFly subscribers provide their mailing address at initial registration. This address is verified by Experian QAS address verification software before the game(s) are shipped. Those addresses rejected by the QAS program are sent to a customer service representative for verification. If the address cannot be verified, the account is closed. All UAA returns are also have the customer's address verified and updated by a customer service representative or the account is closed.

These steps produce highly accurate address lists. GameFly's data indicate that the company's outbound DVD mailings have a UAA return rate of only [**[REDACTED]**] percent.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-81. Please identify what information about customers GameFly routinely records or keeps specifically including any breakage or damage each customer reports, or any breakage or damage noted by GameFly when receiving a DVD back from a customer. Please specify each data element GameFly can record, and any text fields used for any purpose. For each such text field, please provide a representative sample of customer records so that a reviewer understands how each is used by GameFly.

Answer:

Appendix USPS/GFL-81 is a representative customer record containing the information requested. The customer name and address have been redacted to protect the customer's privacy.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-82. Your answer to USPS/GFL-57 states, in pertinent part, “[t]he Postal Service presumably separates undeliverable pieces” from other returns. This language expressly refers to a presumption rather than the fact the question seeks.

- (a) In preparing the answer to USPS/GFL-57, was GameFly management asked by anyone, counsel or on behalf of counsel, whether management had ever made a request of the type referenced in that question?
- (b) What percentage of DVD mail pieces that GameFly receives are UAA returns?
- (c) What, if anything, does GameFly do with respect to UAA pieces it receives?

Answer:

- (a) Yes.

(b) GameFly does not keep track of this information in the ordinary course of business. Mike Gimlett, Senior Vice President, Merchandising & Logistics, recently conducted an informal survey of GameFly’s facilities in Pennsylvania, Florida, Louisiana, and Texas and estimated that approximately 0.3% of DVD returns received by GameFly were UAA returns over the course of 4 weeks.

(c) A GameFly customer service representative tries to obtain a current customer address for each piece returned as UAA. If the customer service representative cannot obtain and verify a current address for the customer, the account is closed.

DOCKET NO. C2009-1
ANSWER OF GAMEFLY, INC., TO
DISCOVERY REQUEST OF USPS
JUNE 9, 2010

USPS/GFL-83. Your answer to USPS/GFL-58 relies, for documentation, only upon Bates stamped documents provided by the Postal Service. In preparing your answer to USPS/GFL-58, was GameFly management asked whether any individual manager had a personal recollection of the fact of testing, or of not testing?

Answer:

Yes.

One clarification to the question: the documents were provided by the Postal Service, but the Bates numbering was provided by GameFly.

[Appendices USPS-GFL-63, 65, 77A, 77B, 79, 81 REDACTED]