



## **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 indicate the lack of responsive information or documents.
3. For each discovery request, please identify the preparer or the person who supervised the response.
4. Please specify the discovery 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 a discovery request 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 discovery request solicits 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 discovery 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. If any responsive information is not available in the form requested, please provide the available information or documents which best respond to the discovery request.

9. The time period covered by each question is limited to the period after September 8, 2002 unless the question (a) specifies a different time period, or (b) seeks production of the documents or information on which GameFly relies in support of a statement, claim or proposition.

10. These discovery 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.

11. 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.

12. If any document responsive to any of these discovery 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.

13. If you assert any claim of privilege or discovery immunity in response to any discovery 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.

14. 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 (disks, tapes, 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.

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

16. If information or documents responsive to any of these discovery 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.

17. If you perceive any ambiguity in interpreting any discovery request or any instruction or definition applicable to a discovery request, please secure a clarification from counsel for the United States Postal Service as soon as the ambiguity is perceived.

**B. Definitions**

1. "Complaint" refers to the Complaint of GameFly, Inc. submitted on April 23, 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 mail piece consisting of a DVD in a specialized mailing envelope, which may also include a protective insert.

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 description of the person's current duties and those duties at the time of deletion or destruction; and (iii) the person's business address.

8. "GameFly" refers to GameFly, Inc. This definition includes the officers, directors, agents and employees of GameFly, Inc.

9. "You" and "your" refers to GameFly, as indicated by the context of the question.

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

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

12. "Business Reply Mail" or "BRM" refers to a domestic service that allows a mailer to receive First-Class Mail back from customers and pay postage only for the pieces returned to the mailer from the original distribution of BRM pieces. These pieces

must have a specific address and format. Postage and fees are collected when the mail is delivered back to the original mailer.

13. “USPS” or “Postal Service” 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.

14. The “GameFly Memo” refers to the Memorandum of GameFly, Inc., Summarizing Documentary Evidence filed under seal with the Postal Regulatory Commission on April 12, 2010.

15. “Destinating GameFly Facility” refers to each of the four distribution centers operated by GameFly. The Destinating GameFly Facility is the location to which GameFly brings its BRM mail pieces after it picks them up at the plant caller service location.

### QUESTIONS

**USPS/GFL-84.** Please refer to your responses to USPS/GFL-65 and 80. Please explain how the UAA return rate of GameFly’s outbound DVD mailings has varied over time and why.

**USPS/GFL-85.** The response to USPS/GFL-66 claims that GameFly lacks any quantitative data on the mailpiece designs that it used before 2005 and believes the mailpiece was identical to or similar to the design identified as Mailer #1 in Appendix USPS-GFL-1. Please explain in what ways the mailpiece design used before 2005 was not identical to the design identified as Mailer #1 in Appendix USPS-GFL-1.

**USPS/GFL-86.** In your response to USPS/GFL-73, you state:

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.”

Please provide a complete listing of all sources of GameFly “scrap,” including those involving sources of damage to GameFly’s DVDs that are not directly the result of mail processing. Include in this listing estimates of the proportions of all damaged DVDs attributable to each source (e.g., damage incurred extracting a factory-produced DVD prior to entering the DVDs in the mail).

**USPS/GFL-87.** Please refer to your response to USPS/GFL-77.

- (a) Prior to the evaluation at the Pittsburgh distribution center, had GameFly evaluated the different sources of breakage, whether those evaluations were documented in records or not.?
- (b) If yes, please provide a complete description of each evaluation.
- (c) What proportion of GameFly’s customer returned DVDs flow through the Pittsburgh distribution center?

**USPS/GFL-88.** Please refer to your response to USPS/GFL-77.

- (a) Do DVDs ever crack or become damaged while extracting them from factory packaging prior to enclosing them in a mail piece and entering them into the mail?
- (b) Please provide all documents that discuss this source of damage or its origin.
- (c) Please describe fully all forms of packaging used by manufacturers of DVDs that GameFly distributes to its subscribers.

- (d) Please describe fully the procedures used by GameFly to extract DVDs from each form of packaging prior to preparing a mail package to enter into the mailstream.

**USPS/GFL-89.** Please refer to your response to USPS/GFL-77. Please describe completely the methodology employed in conducting the Pittsburgh evaluation. Include a description of the personnel employed in the evaluation, their qualifications, and any training given prior to the evaluation.

**USPS/GFL-90.** Please refer to your response to USPS/GFL-77. In evaluating damage incurred by its DVDs, does GameFly distinguish between damage according to

- (a) the particular manufacturer of the DVD;
- (b) the materials from which the DVD is constructed or manufactured (including types of coatings or labeling);
- (c) whether a DVD is blu ray versus non-blu ray;
- (d) how often the DVD has been rented;
- (e) how often the DVD has been played?
- (f) Please provide any documents that might exist discussing these potential sources of DVD damage.

**USPS./GFL-91.** Please refer to your response to USPS/GFL-77.

- (a) In evaluating the sources of damage to GameFly's DVDs, either in the Pittsburgh evaluation, or any other evaluation, has GameFly differentiated the sources of damage in the mailstream according to the type of machine or other operation that is thought to have caused the damage?

- (b) Please provide any documents that might exist discussing this source of damage.

**USPS/GFL-92.** Please refer to your response to USPS/GFL-77. Has GameFly ever compared the sources of damage to its own DVDs with sources of damage to Netflix or Blockbuster DVDs? If yes, please discuss and provide any documents that might exist regarding the differences in sources of damage.

**USPS/GFL-93.** Please refer to your response to USPS/GFL-77.. Please describe how GameFly detects breakage in its DVDs. For example, are the DVDs scanned with equipment or are they subjected only to visual inspection? Include in your description an identification of all equipment used and each step in the process of detecting damage.

**USPS/GFL-94.** Please refer to your response to USPS/GFL-77. Is there a threshold for damage of any particular type that GameFly can tolerate (e.g., small cracks, scratches, cosmetic blemishes) and still send game DVDs to GameFly's subscribers (who do not report any damage)? Please describe fully.

**USPS/GFL-95.** Please refer to your response to USPS/GFL-77.

- (a) Does GameFly analyze (or has it ever analyzed) DVD breakage according to whether DVDs are broken on the outbound mail trip or the inbound trip?
- (b) If so, how has GameFly determined the trip on which breakage occurs (e.g., customer reports, reports from GameFly employees inspecting returned DVDs)? Please describe fully.
- (c) Please provide any documents that might exist discussing these analyses.

**USPS/GLF-96.** Please refer to your response to USPS/GFL-77

- (a) Has GameFly ever attributed DVD damage to processes or equipment used to prepare or package a DVD for mailing?
- (b) Please describe every step in the process of preparing the DVD for mailing. Include in the description each piece of equipment used in the preparation and packaging.
- (c) Please provide any documents that might exist discussing the packaging of DVDs for mailing in relation to potential sources of damage.

**USPS/GFL-97** Please refer to your response to USPS/GFL-77.

- (a) Has GameFly ever experienced damage to its DVDs during their evaluation or cleaning them after return by a customer?
- (b) Please describe fully how returned DVDs are evaluated, cleaned or repaired prior to sending them out to subsequent customers.
- (c) Please provide any documents that might exist discussing the cleaning or repair process in relation to potential sources of damage.
- (d) Please provide any documents that might exist discussing cleaning or repair processes in relation to damage.

**USPS/GFL-98.** Please refer to your response to USPS/GFL-77.

- (a) Is GameFly aware that the processes used for manufacturing DVDs, and qualities of the polycarbonate used, can affect the susceptibility of DVDs to cracking or otherwise breaking? ( For example, numbers of layers of paint and degree of curing in the manufacturing process).

- (b) Please describe fully the extent of GameFly's knowledge concerning the linkages between DVD manufacturing and subsequent breakage during handling and play.
- (c) Please describe fully the extent of GameFly's knowledge concerning the linkages among type(s) and/or mix(es) of polycarbonate in DVD manufacturing and subsequent breakage during handling and play.
- (d) Please provide any documents that might exist discussing the relationship between DVD manufacturing and breakage.

**USPS-GFL-99.** Please refer to your response to USPS/GFL-80. Please explain what considerations led to GameFly's decision to mail its DVDs at single piece rates.

**USPS-GFL-100.** Please refer to your response to USPS/GFL-8, including your Supplemental Answer. Has the process described changed over time? Please describe in detail the process by which GameFly historically has assembled its mailers once procured and all mailing/shipping supplies to the point actual mail is inducted or entered. If changes in mail piece design triggered or coincided with any change in the production process, please explain completely the before and after processes and why such changes were undertaken.

**USPS-GFL-101.** The invoices contained in Appendix USPS-GFL-8 show that a GameFly uses two different mailers of one size, a 2 color DVD mailer and 4 color DVD mailer. Please describe how each mailer differs and how each is utilized.

**USPS/GFL-102.** The response to USPS/GFL-51 appears to reference only emails which relate to tests conducted by GameFly to determine mailability or machinability,

including susceptibility to breakage and frequency of breakage of GameFly's own mail pieces, and any tests conducted on mail piece designs listed in your response to USPS/GFL-1. Documents, as defined in the Second Discovery Request of USPS to GameFly, Inc. (USPS/GFL-47 to -62), encompass any written, recorded, computer-stored, computer-generated or graphic material however stored, produced or reproduced, construed to the full extent of the definition in Rule 34 of the Federal Rules of Civil Procedure. Please produce all documents and communications related to any tests responsive to USPS/GFL-51, including any communications with the Postal Service.

**USPS/GFL-103.** The response to USPS/GFL-60 states that GameFly has searched its email files and determined that it has no communications related to the live mail tests performed from July 2007 through July 2008. Documents, as defined in the Second Discovery Request of USPS to GameFly, Inc. (USPS/GFL-47 to -62), encompass any written, recorded, computer-stored, computer-generated or graphic material however stored, produced or reproduced, construed to the full extent of the definition in Rule 34 of the Federal Rules of Civil Procedure. Please produce all documents and communications related to the 'live mail' tests of multiple mailer configurations performed from July 2007 to July 2008 referred to on page 106 of the GameFly Memo.