

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

Complaint of GameFly, Inc.

Docket No. C2009-1

PRESIDING OFFICER'S RULING
CORRECTING TRANSCRIPTS VOLUMES 3 AND 4
AND OTHER PROCEDURAL MATTERS

(Issued July 8, 2010)

GameFly, Inc. (GameFly) filed two motions to propose corrections to the transcripts of the June 16, 2010 hearing concerning the testimony of witness Glick.¹ They were unopposed. These motions, as to transcript volumes 3 and 4, are granted.

The corrections to the public transcript, volume 3, proposed by GameFly are listed below.

<u>Page</u>	<u>Line</u>	<u>Correction</u>
68	16	Add a period after "a few weeks"; change "between" to "Between"
69	24	Delete "for"
70	10	Add "any" after "referring to" ("referring to any,")
74	6	Add a comma after "Well"
74	16	Add a comma after "Federal courts" (Federal courts, which)
74	22	Delete "you're not,"

¹ Motion of GameFly, Inc., to Adopt Corrections to Transcript Volume Three, June 28, 2010; Motion of GameFly, Inc., to Adopt Corrections to Transcript Volume Four, June 28, 2010.

75	3	Add a comma after "In addition" (In addition,)
75	10	Add a comma after "I mean" (I mean, these)
75	14	Change "within the Postal Service with" to "within the Postal Service or with"
75	18	Change "Hortis" to "Hodess"
76	3	Change "in, if" to "in. If"
76	5	Add a comma after "exclude them" (exclude them, then)
92	14-15	Change "and periodical standard mail" to "in Periodicals and Standard Mail"
103	11	Change "normal" to "manual"
105	5	Change "so question" to "so in question"
105	8	Change "submit" to "commit"
110	11	Change "process" to "processing"

The corrections to the sealed transcript, volume 4, proposed by GameFly are listed below.

<u>Page</u>	<u>Line</u>	<u>Correction</u>
134	13	Change "a" to "the"
134	24-25	Change substantial to "substantial"; damage to "damage"; add a comma after "four"
155	3	Change "a" to "the"
155	14	Change "a memorandum brief" to "a memorandum or brief"
156	3	Change "We" to "They"
654	9-10	Change "dual path rev call" to "dual pass rough cull"
657	16	Change "unless" to "and thus"
659	6	Change "it sets" to "it's not"
659	10, 16, 17, 24	Change "confirmed" to "Confirm"
660	2, 8, 11	Change "confirmed" to "Confirm"

Designations of written cross-examination. The Postal Service originally filed its Designation of Written Cross-Examination on June 10, 2010, which listed pre-hearing discovery answers. Ordinarily designated materials, in proper hardcopy form, must accompany a notice of designation. See 39 CFR 3001.30(e)(2) and 3001.9(c) and (d). During the hearing on June 16, 2010, the Postal Service was allowed until July 2, 2010

to file the materials it designated, since the materials designated included public and non-public discovery responses that were not yet adequately separated.²

On July 2, 2010, the Postal Service updated its earlier filed designation to include discovery answers filed July 1, 2010.³ Since the form of the required hardcopies was not entirely correct, the filing was accepted provisionally, provided that the hardcopy materials would be properly refilled promptly. This ruling also extends that date from July 2, 2010 to July 9, 2010, so as to allow the Postal Service time to satisfy requirements of form that it had overlooked. The extension is not likely to cause material prejudice to any party, and will help ensure that the non-public hardcopies are placed within the sealed transcript.

Unrelated motions. The Motion of GameFly, Inc., for Access by David Hodess to Nonpublic Materials was filed on June 21, 2010. It was not opposed. This motion is granted.

The Motion of the United States Postal Service for Late Acceptance of Follow-Up Discovery Directed to GameFly, Inc., was filed on June 17, 2010. It was not opposed. This motion is granted.

² During the hearing on June 16, 2010, counsel for the Postal Service was asked if it will “identify the written cross-examination to be included in today’s transcript.” Tr. at 3/120. Counsel for the Postal Service clarified that it still needed to “extract certain sensitive information from some of the materials” and that it did not have some of the other materials that have been designated during the hearing, but would expect to have that material back to the Commission on July 2, 2010. *Id.* at 3/120-21. This was acceptable to GameFly. *Id.*

³ United States Postal Service Designation of Written Cross-Examination, July 2, 2010.

RULING

1. The Motion of GameFly, Inc., to Adopt Corrections to Transcript Volume Three, filed June 28, 2010, is granted.
2. The Motion of GameFly, Inc., to Adopt Corrections to Transcript Volume Four, filed June 28, 2010, is granted.
3. The due date for the Postal Service to complete its filing of its designation of written cross-examination is extended from July 2, 2010 to July 9, 2010.
4. The Motion of GameFly, Inc., for Access by David Hodess to Nonpublic Materials, filed on June 21, 2010, is granted.
5. The Motion of the United States Postal Service for Late Acceptance of Follow-Up Discovery Directed to GameFly, Inc., filed on June 17, 2010, is granted.

Dan G. Blair
Presiding Officer