

ORIGINAL

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

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OFFICE OF THE SECRETARY

MAILING ONLINE SERVICE

Docket No. MC98-1

RESPONSE OF UNITED STATES POSTAL SERVICE
TO INTERROGATORIES OF
THE OFFICE OF THE CONSUMER ADVOCATE
REDIRECTED FROM WITNESS GARVEY
(OCA/USPS-T1-20 & 21)

The United States Postal Service hereby provides responses to the following interrogatories of the Office of the Consumer Advocate: OCA/USPS-T1-20 & 21, filed on July 30, 1998, and redirected from witness Garvey.

Each interrogatory is stated verbatim and is followed by the response.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

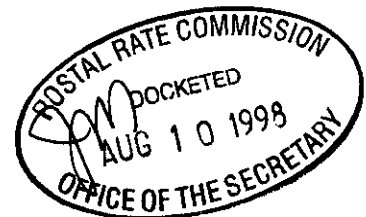
By its attorneys:

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August 10, 1998



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OCA/USPS-T1-20. Will the Mailing Online data or information received via the internet into the custody of the Postal Service at its "computer network control center" have the status of mail prior to its transmittal to commercial print sites? If so, what will be the mail classification of the Mailing Online data?

RESPONSE.

This question and OCA/USPS-T1-21 (which asks the parallel question regarding Mailing Online pieces en route from the printer to the postal entry facility) seek a legal opinion regarding when mailpieces originating from Mailing Online service (MOL pieces) become mail. Accordingly, both questions are addressed by the Postal Service as an institution in the discussion that follows.

The question of when MOL pieces become mail can only be answered in a specific context, since at a given point during production, a piece may be mail for one purpose but not for another. Examples¹ include: (1) When does an MOL piece become mail for the purpose of being sealed against inspection?² (2) When does an MOL piece become mail for purposes of Title 18, United States Code (criminal code)? (3) When

¹ The Postal Service does not believe that the first three contexts discussed raise issues that need to be resolved in this forum. The fourth, however, is more clearly relevant and is being addressed generally in response to a number of outstanding interrogatories.

² Under 39 U.S.C. § 3623(d), the Postal Service must maintain at least one class of mail "for the transmission of letters sealed against inspection." Mailpieces within these classes cannot "be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, or pursuant to the authorization of the addressee."

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does an MOL piece become mail in the sense that Commission jurisdiction attaches?³

And, (4) when does the Federal Tort Claims Act's exemption from liability for negligent transmission, etc. of mail (28 U.S.C. § 2680(b)) apply?

(1) When a sender deposits a First-Class letter in a collection box, thus relinquishing its custody to the Postal Service, it is clear that the seal against inspection has attached. The seal remains attached until it is delivered to the addressee, unless the addressee authorizes otherwise. In short, the letter is sealed against inspection while it remains under the physical control of the Postal Service.

In the case of MOL, pieces sealed against inspection will be treated as such when they are within the custody of the Postal Service (either electronically in its server or as physical mail). While the pieces are within the custody of printers, the contract, as specified in USPS-LR-5/MC98-1, will require them to provide adequate security measures to preserve the seal. The Postal Service has not determined at this time that any regulatory changes will be necessary.

(2) In interpreting the mail obstruction and criminal mail theft statutes, courts have addressed the question of the circumstances under which mailpieces in deposit and collection receptacles were covered. For example, in *Smith v. United States*, 343 F.2d 539 (5th Cir.), *cert. denied*, 382 U.S. 861 (1965), the court held that outgoing

³ This question is more typically posed in the form of whether a product or service is postal, but this examples informs the discussion of the questions posed.

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mailpieces placed in an unlocked hotel mailbox used for incoming mail were deemed to be within the scope of section 1708. *Accord, United States v. Lopez*, 457 F2d 396, 399-400 (2d Cir.), *cert denied*, 409 U.S. 866 (1972) (letter placed in apartment house receptacle for carrier pickup within scope of section 1708). The *Smith* court, following *Rosen v. United States*, 245 U.S. 467 (1918), looked to the scope of postal regulations defining mail depositories to determine the scope of the criminal statute.⁴

Applied to the context of Mailing Online mailpieces, one can see that the Postal Service could change its regulations in an attempt to define when a Mailing Online mailpiece, whether virtual or physical, becomes subject to the criminal code -- conceivably by defining the Mailing Online Web server as a mail receptacle.⁵

(3) That Mailing Online service, as proposed, involves a postal service subject to the Commission's jurisdiction is effectively conceded by the Postal Service Request. Since the only fees requested are for "pre-mail" services, this also means that the

⁴ Erstwhile mailpieces in unlocked receptacles may in fact be opened or inspected by non-postal parties -- whether inadvertently or otherwise. The preclusion against such acts, however, arises not from a non-postal party's violation of the seal against inspection (which focuses specifically upon postal persons), but from the criminal code and civil enforcement as between the addressee and the interloper. This illustrates how the scope of what is mail is greater for the criminal code than the one that proscribes inspection of sealed mail.

⁵ The Postal Service has no current plans to change the regulations discussed in this interrogatory response to reflect the provision of Mailing Online market test or experimental services.

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purely electronic transactions are essentially mail, or perhaps more strictly, a convenient means for electronic induction of mail.

(4) As for application of the Federal Tort Claims Act exemption from liability, a number of outstanding interrogatories will respond to questions regarding what recourse may be available to customers for errors at various stages of the Mailing Online process. The short answer to when an MOL piece becomes mail for tort claim purposes is that the Postal Service has no current plans to make special accommodation in its regulations for MOL pieces – although if a need can be shown this position can be revisited. Indeed, one purpose of conducting a market test and experiment is to determine whether such a need exists. An MOL piece would certainly be mail for this purpose upon its entry as physical mail. In general, liability for errors that occur prior to physical entry is defined by the printer's responsibilities for its own work, as specified in USPS-LR-5/MC98-1, and the availability of refunds for jobs that are not entered successfully as physical mail. No new guarantees or specific promises are offered as part of Mailing Online service.

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OCA/USPS-T1-21. Will the Mailing Online data or information received by the commercial printers from the Postal Service "computer network control center" have the status of mail between the time it reaches the commercial print site and when it is entered at a local post office? If so, what will be the mail classification of the Mailing Online data?

Response.

See the Response to OCA/USPS-T1-20.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

A handwritten signature in cursive script, appearing to read "Scott L. Reiter", is written above a horizontal line.

Scott L. Reiter

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