



Court of Appeals' holding in *GameFly, Inc. v. PRC*, 704 F.3d 145, 148-149 (D.C. Cir. 2013), that the cost, operational and other differences between letter- and flat-shaped DVD mailers are irrelevant to the task of choosing a remedy because GameFly's "choice" to use flats is an involuntary one, compelled by the Postal Service's unlawful discrimination in processing letters.

GameFly believes that the Postal Service's extraordinary and unprecedented position is foreclosed by fundamental principles of issue preclusion, finality and repose that are "as important when an issue has been determined by an administrative tribunal as when it has been determined by a court." Restatement (2nd) of Judgments § 83 (comment b). We believe that a brief summary of the relevant principles, and brief responses to some of the Postal Service's factual inaccuracies, would be helpful to the Commission and fair to GameFly.

Respectfully submitted,

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