

Does Post Office Give Netflix an Unfair Business Advantage?

by Dan Brecher on January 17, 2013

If you subscribe to Netflix, you know that DVDs appear in your mailbox at seemingly warp speed. While consumers certainly appreciate the prompt delivery, at least one other mail-order business believes Netflix is receiving an unfair business advantage from the U.S. Postal Service.

In 2011, GameFly Inc. filed a lawsuit against the Postal Regulatory Commission, alleging that it was providing Netflix with special treatment by removing its DVDs from the automated letter stream and manually sorting them. GameFly further noted that the Postal Service provides the service to Netflix free of charge.

GameFly, which rents video games to customers via the U.S. mail, asked the Postal Service to provide a similar accommodation because the automated sorting equipment tends to damage the discs. After the Postal Service refused, GameFly was forced to use a cardboard insert to protect the DVDs and mail them as First-Class “flats”—a more expensive rate category intended for larger envelopes. Because Netflix was able to avoid these added costs, GameFly’s lawsuit alleged that Postal Service had discriminated against the company in rates and terms of service.

Most recently, the U.S. Court of Appeals for the District of Columbia sided with GameFly, holding that the Postal Regulatory Commission’s practices were discriminatory and that prior efforts to cure the discrimination have fallen short. It ordered the Commission to remedy all discrimination against the company or provide a reasonable explanation for providing Netflix preferential treatment.

“The Postal Service has saved Netflix -- apparently its biggest DVD mailer customer -- from this crippling otherwise industry wide problem by diverting Netflix mail from the automated letter stream, shifting it to specially designated trays and containers, hand culling it and hand processing it,” U.S. Circuit Judge David Sentelle wrote in the opinion. “Rather obviously, this is not without cost to the Postal Service.”

Unless the Commission can explain why it left discrimination in place, it must order new remedies that place the companies on equal footing. Therefore, it is likely that changes could be on the way for Netflix and other companies that rent DVDs through the U.S. mail.