

Before The
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint on Electronic Postmark®

Docket No. C2004-2

DIGISTAMP RESPONSE
TO ORDER NO. 1455
(March 20, 2006)

DigiStamp thanks the Postal Rate Commission for hearing the DigiStamp complaint on Electronic Postmark®.

The plight of a single small businessman might seem trivial, compared to the enormous tasks that face the POSTAL SERVICE and you. But it's precisely because of the disparity in size between the Postal Service and DigiStamp that this case is so important. DigiStamp will be able to show that the Postal Service has tried to sidestep the Commission and offer a postal service that they have no business pursuing.

Order 1455 directed DigiStamp to file a statement estimating the amount of time it will require to develop and file a case-in-chief.

- 1) **No later than April 17, 2006, DigiStamp will deliver to the Commission its case-in-chief, proving that**
 - a) **the Postal Service created a new postal service** by instituting Electronic Postmarks® (EPM).
 - b) **the Postal Service introduced the EPM in violation of statutory requirements** that any new postal service be approved by the Commission.
 - c) **the Postal Service violated its proper functions:**

- i) appropriating a product developed in the private sector,
- ii) attempting to usurp and exploit markets developed and well-served by the private sector,
- iii) resulting in the detriment of both private enterprise like DigiStamp and the citizens served by DigiStamp and similar businesses.

d) Therefore, the Commission

- i) should order the Postal Service to desist offering the EPM**
- ii) should forbid any further development or marketing of any similar service** that encroaches on the established products, processes, and markets of private business in this area.

2) The case-in chief will be straightforward.

- a) On the question of whether EPM is a postal service:
 - i) DigiStamp will prove **that eighty percent of its business consists of validating the transmission of documents**. We offer that a cross-examination of the Postal Service, or inspection of its records by an independent party, is likely to show a similar rate of document-delivery function for EPM.
 - ii) DigiStamp will prove that **the Postal Service markets its EPM as a postal service**, as shown at its web site <http://www.uspsepm.com/>,
 - (1) where the Postal Service states plainly “Certified Electronic Communication has arrived”
 - (2) and sells a usage “license” with the Postal Service and requires payment to the Postal Service.
 - iii) DigiStamp will prove that the **Postal Service actively seeks statutory recognition of EPM as legally equivalent to registered mail**. Specifically, the postal service has lobbied State legislators to effectively extend the government-backed monopoly to a new market segment.
 - iv) **From this, it follows that the Postal Service is in error in claiming in its “Motion to Dismiss” that the EPM is not a postal service.**

- b) **The statutory oversight responsibility of the Commission is clear, unambiguous, black-letter law**, and the failure of the Postal Service to seek and gain the approval of the Commission for its EPM product is a matter of record.
- c) As for Postal Service improperly encroaching on private enterprise,
- i) **The technology for digital time stamps was developed entirely by private businesses**, with standards created by industry members working as the Internet Engineering Task Force (IETF) in the late 1990s. The Postal Service was not a contributor to this work.
 - ii) **The digital time stamp product, and the market for the product, were effectively created before the Postal Service ever entered the market.**
 - (1) In 1999, DigiStamp delivered a working service.
 - (2) By 2001, when the Postal Service posted its solicitation for a technical partner to develop a “service to provide and/or complement ... electronic content delivery”, DigiStamp had already provided time stamp services to thousands of customers, including the States of Washington and Ohio, and the Mexican Government.
 - iii) **The Postal Service now uses engineering that was done by private industry.** The Postal Service did not develop an independent product, but hired a private business, AuthentiDate, to support its EPM.
 - iv) **The proper role of the Postal Service, like all government-created programs, is to create a “public good”**—something from which citizen’s benefit, but private business does not possess the resources or self-interest to create. The Postal Service has not created a public good, but seeks to usurp, exploit, and profit from the work of private business and does so in an ineffective manner.
 - (1) From the indisputable facts that private industry created digital time stamps, created the market for digital time stamps, and serves that market effectively and efficiently, it follows that **digital time stamps are not a**

“public good.” They are a valuable service created, supplied by, and rightfully benefiting the growth of private business.

(2) In fact, ***the Postal Service EPM does not even work correctly. Far from doing a better job than private business can do, the Postal Service does a worse job.*** As DigiStamp will prove, the Postal Service EPM service allows a person to get a “certified receipt” from the Postal Service for a document that, in fact, was never received. See the detail below.

d) The Commission should order the Postal Service to desist offering the EPM for the simple, straightforward reason that **Postal Service sidestepped the legal authority of the Commission by ever offering the EPM.**

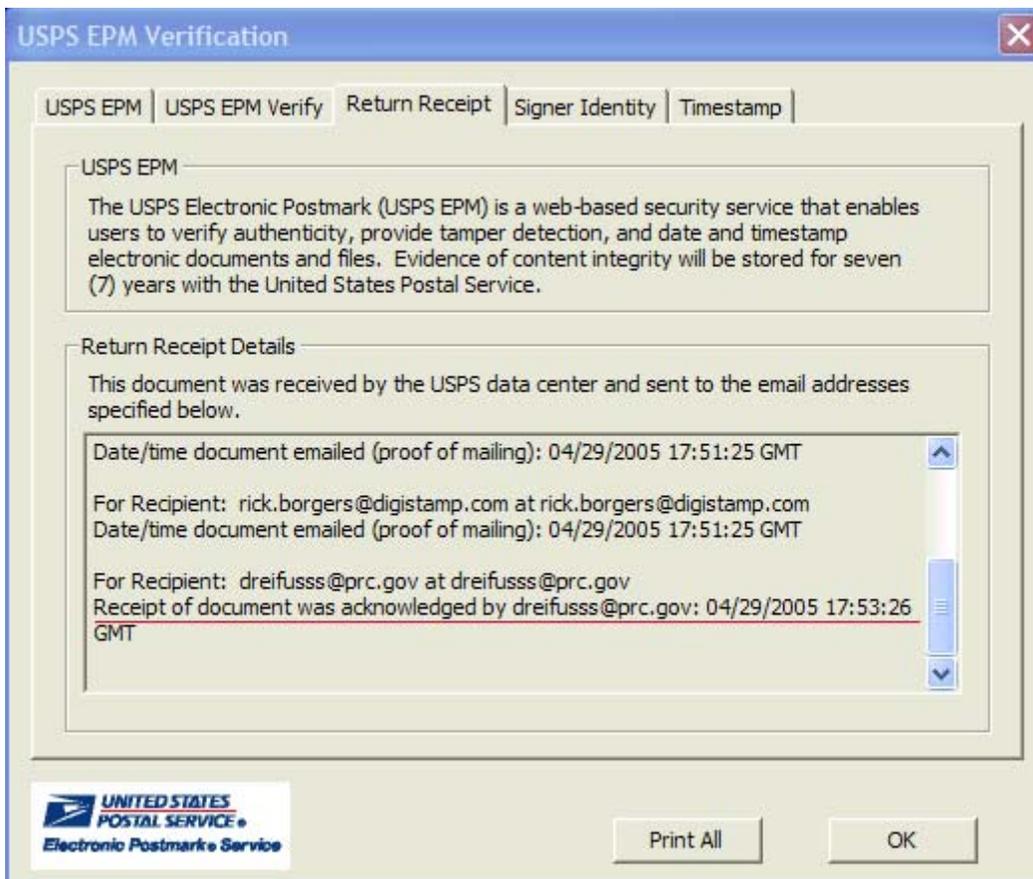
The Commission should forbid the Postal Service from any further offering of EPM’s. Far from providing a public good, the Postal Service EPM undermines the welfare of citizens who need certification and legally sound proof of delivery of electronic documents.

If the Postal Service is allowed to offer digital time stamps, we can foresee the Postal Service extending its marketing strategy based on the “backed by the federal government” claim it already makes. This will drive private industry from the market, since we do not have the Postal Service special legal standing, a government backed monopoly, multi-billion-dollar brand or the thousands of outlets (Post Offices) that the Postal Service can exploit. The consequent loss of competition will insure higher prices for time stamps, decreased innovation, and loss of tax revenue to local, state, and federal governments.

Additional concerns for the EPM consumer. Though it’s not directly to the point of the DigiStamp complaint, I would like to offer a suggestion that the Commission try the EPM Certified Document Delivery Service. Shelley Dreyfus, a member of the Commission staff, has some experience with the service. About a year ago, I demonstrated to Shelley Dreyfus that I could use the Postal Service EPM service to

send her a document and get a “certified receipt” from the Postal Service. Although she never actually received the document, I got a receipt that said she did.

Here is a computer screen print of my proof from the Postal Service that Shelley acknowledges receipt of document; she never did display or acknowledge the document (red underline was added).



Here are the simple instructions to create an acknowledgement for a document that is not received:

Setup:

1. Create your Postal Service EPM account.
2. Install the EPM extensions for Microsoft Word.

Send a document and request proof of delivery:

1. Create your “important legal document” in Microsoft Word.
2. Add the electronic postmark.
3. Click “electronic delivery with a return receipt”.
4. Send the document to two or more email addresses:
 - #1 – Someone who will not want to accept/read your document.
 - #2 – Your email address (or, any email address that you have access to).

The Postal Service will transmit your document to the designated recipients. When the document appears in the inbox #2, an email address that you have access to, then “accept” the delivery. But, when asked to enter the email address for acceptance, enter the email address of party #1. The system will accept your entry of an email address that is not yours.

You, the sender of the document, can now open your copy on your computer and see the Postal Service’s “proof of mailing” and “receipt of document and acknowledged” by party #1. The problem is that party #1 has not seen the document although you have proof otherwise. You can also forward your document to other parties as proof of the party #1’s receipt of the document.

You, the sender of the document, will also receive an email from the Postal Service stating a delivery confirmation that party #1 has received, opened and displayed your document.

So when party #1 receives the document in their inbox and simply deletes the email or the email is removed by filters or lost for any other reason, then they are never aware that you have Postal Service “proof of delivery”. Or, if party #1 receives the document in their inbox and tries to enter “not accepted” the Postal Service software prevents them. The system informs them that they have already accepted the document.

DigiStamp requests that the Commission moves forward quickly in the schedule for hearing our complaint.

Respectfully submitted,

Rick Borgers
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DigiStamp, Inc.
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