

(D) IN AN APPROPRIATE CASE, A COURT OF COMPETENT JURISDICTION MAY GRANT INJUNCTIVE RELIEF TO ENFORCE THE PARTIES' RIGHTS UNDER THIS SECTION.

SUBTITLE 7. BREACH OF CONTRACT; GENERAL; DEFECTIVE COPIES; REPUDIATION AND ASSURANCES.

GENERAL.

21-701. BREACH OF CONTRACT; MATERIAL BREACH.

(A) WHETHER A PARTY IS IN BREACH OF CONTRACT IS DETERMINED BY THE AGREEMENT OR, IN THE ABSENCE OF AGREEMENT, THIS TITLE. A BREACH OCCURS IF A PARTY WITHOUT LEGAL EXCUSE FAILS TO PERFORM AN OBLIGATION IN A TIMELY MANNER, REPUDIATES A CONTRACT, OR EXCEEDS A CONTRACTUAL USE TERM, OR OTHERWISE IS NOT IN COMPLIANCE WITH AN OBLIGATION PLACED ON IT BY THIS TITLE OR THE AGREEMENT. A BREACH, WHETHER OR NOT MATERIAL, ENTITLES THE AGGRIEVED PARTY TO ITS REMEDIES. WHETHER A BREACH OF A CONTRACTUAL USE TERM IS AN INFRINGEMENT OR A MISAPPROPRIATION IS DETERMINED BY APPLICABLE INFORMATIONAL PROPERTY RIGHTS LAW.

(B) A BREACH OF CONTRACT IS MATERIAL IF:

- (1) THE CONTRACT SO PROVIDES;
- (2) THE BREACH IS A SUBSTANTIAL FAILURE TO PERFORM A TERM THAT IS AN ESSENTIAL ELEMENT OF THE AGREEMENT; OR
- (3) THE CIRCUMSTANCES, INCLUDING THE LANGUAGE OF THE AGREEMENT, THE REASONABLE EXPECTATIONS OF THE PARTIES, THE STANDARDS AND PRACTICES OF THE BUSINESS, TRADE, OR INDUSTRY, AND THE CHARACTER OF THE BREACH, INDICATE THAT:

(A) THE BREACH CAUSED OR IS LIKELY TO CAUSE SUBSTANTIAL HARM TO THE AGGRIEVED PARTY; OR

(B) THE BREACH SUBSTANTIALLY DEPRIVED OR IS LIKELY SUBSTANTIALLY TO DEPRIVE THE AGGRIEVED PARTY OF A SIGNIFICANT BENEFIT IT REASONABLY EXPECTED UNDER THE CONTRACT.

(C) THE CUMULATIVE EFFECT OF NONMATERIAL BREACHES MAY BE MATERIAL.

21-702. WAIVER OF REMEDY FOR BREACH OF CONTRACT.

(A) A CLAIM OR RIGHT ARISING OUT OF A BREACH OF CONTRACT MAY BE DISCHARGED IN WHOLE OR PART WITHOUT CONSIDERATION BY A WAIVER IN A RECORD TO WHICH THE PARTY MAKING THE WAIVER AGREES AFTER BREACH, SUCH AS BY MANIFESTING ASSENT, OR WHICH THE PARTY MAKING THE WAIVER AUTHENTICATES AND DELIVERS TO THE OTHER PARTY.

(B) A PARTY THAT ACCEPTS A PERFORMANCE WITH KNOWLEDGE THAT THE PERFORMANCE CONSTITUTES A BREACH OF CONTRACT AND, WITHIN A REASONABLE