

(3) IF A TENDER OF DELIVERY OF A COPY OR A SHIPPING DOCUMENT FAILS TO CONFORM TO THE CONTRACT, THE RISK OF LOSS REMAINS WITH THE LICENSOR UNTIL CURE OR ACCEPTANCE.

(C) IF A COPY IS HELD BY A THIRD PARTY TO BE DELIVERED OR REPRODUCED WITHOUT BEING MOVED OR A COPY IS TO BE DELIVERED BY MAKING ACCESS AVAILABLE TO A THIRD PARTY RESOURCE CONTAINING A COPY, THE RISK OF LOSS PASSES TO THE LICENSEE UPON:

(1) THE LICENSEE'S RECEIPT OF A NEGOTIABLE DOCUMENT OF TITLE OR OTHER ACCESS MATERIALS COVERING THE COPY;

(2) ACKNOWLEDGMENT BY THE THIRD PARTY TO THE LICENSEE OF THE LICENSEE'S RIGHT TO POSSESSION OF OR ACCESS TO THE COPY; OR

(3) THE LICENSEE'S RECEIPT OF A RECORD DIRECTING THE THIRD PARTY, PURSUANT TO AN AGREEMENT BETWEEN THE LICENSOR AND THE THIRD PARTY, TO MAKE DELIVERY OR AUTHORIZING THE THIRD PARTY TO ALLOW ACCESS.

21-615. EXCUSE BY FAILURE OF PRESUPPOSED CONDITIONS.

(A) UNLESS A PARTY HAS ASSUMED A DIFFERENT OBLIGATION, DELAY IN PERFORMANCE BY A PARTY, OR NONPERFORMANCE IN WHOLE OR PART BY A PARTY, OTHER THAN OF AN OBLIGATION TO MAKE PAYMENTS OR TO CONFORM TO CONTRACTUAL USE TERMS, IS NOT A BREACH OF CONTRACT IF THE DELAY OR NONPERFORMANCE IS OF A PERFORMANCE THAT HAS BEEN MADE IMPRACTICABLE BY:

(1) THE OCCURRENCE OF A CONTINGENCY THE NONOCCURRENCE OF WHICH WAS A BASIC ASSUMPTION ON WHICH THE CONTRACT WAS MADE; OR

(2) COMPLIANCE IN GOOD FAITH WITH ANY FOREIGN OR DOMESTIC STATUTE, GOVERNMENTAL RULE, REGULATION, OR ORDER, WHETHER OR NOT IT LATER PROVES TO BE INVALID.

(B) A PARTY CLAIMING EXCUSE UNDER SUBSECTION (A) OF THIS SECTION SHALL SEASONABLY NOTIFY THE OTHER PARTY THAT THERE WILL BE DELAY OR NONPERFORMANCE.

(C) IF AN EXCUSE AFFECTS ONLY A PART OF A PARTY'S CAPACITY TO PERFORM AN OBLIGATION FOR DELIVERY OF COPIES, THE PARTY CLAIMING EXCUSE SHALL ALLOCATE PERFORMANCE AMONG ITS CUSTOMERS IN ANY MANNER THAT IS FAIR AND REASONABLE AND NOTIFY THE OTHER PARTY OF THE ESTIMATED QUOTA TO BE MADE AVAILABLE. IN MAKING THE ALLOCATION, THE PARTY CLAIMING EXCUSE MAY INCLUDE THE REQUIREMENTS OF REGULAR CUSTOMERS NOT THEN UNDER CONTRACT AND ITS OWN REQUIREMENTS.

(D) A PARTY THAT RECEIVES NOTICE PURSUANT TO SUBSECTION (B) OF THIS SECTION OF A MATERIAL OR INDEFINITE DELAY IN DELIVERY OF COPIES OR OF AN ALLOCATION UNDER SUBSECTION (C) OF THIS SECTION, BY NOTICE IN A RECORD, MAY: